



THE GIFT OF JURISDICTION: OUR ISLAND PROVINCE



REPORT OF THE COMMISSION ON THE *LANDS PROTECTION ACT*
JUNE 30, 2013



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**THE GIFT OF JURISDICTION:
OUR ISLAND PROVINCE**

**REPORT OF THE
COMMISSION ON THE *LANDS PROTECTION ACT***

JUNE 2013



Commission
on the
Lands Protection Act

Commission de
révision de la
Lands Protection Act



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June 28th, 2013

Honourable Robert Ghiz
Premier of Prince Edward Island
Shaw Building
Charlottetown, PE

Dear Premier Ghiz:

The Commission is pleased to present its Report on the Prince Edward Island Lands Protection Act. I trust that the Report will be helpful as Government considers what action it will take. I would like to thank you and the other members of the Executive Council for the opportunity to consult with Islanders and examine the Lands Protection Act and related matters as set out in the Terms of Reference of my appointment pursuant to the Public Inquiries Act.

I would specifically express thanks to Patrick Carroll for the excellent services that he provided on a daily basis. Patrick, an employee of the Department of Finance, Energy and Municipal Affairs was seconded to the Commission on a full-time basis. As well, Albert MacDonald, Evan MacDonald, Stephen Mutch and Natalie Dow provided assistance when requested to do so. The Commission was fortunate to be able to seek advice from Jean-Paul Arsenault on various occasions.

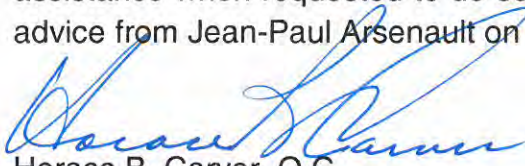

Horace B. Carver, Q.C.
Commissioner

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COMMISSIONER'S MESSAGE

“WHAT’S BEST FOR THE LAND?”



These five words were the first response at the O’Leary public meeting after I’d outlined the Commission’s terms of reference and made some general comments.

They’ve stayed with me throughout the entire consultative process and into the drafting of this final report. In the end, is this not the primary question: “What’s best for the land?”

When I heard these words in O’Leary, I immediately recalled an exchange between myself and Prime Minister Trudeau on September 10, 1980 at the Federal-Provincial Constitutional Conference. On that occasion I, along with Premier Angus MacLean, argued that Prince Edward Island must always have the legal and constitutional right to control land ownership and land use in this province. I stated:

“... we believe that domicile has some rights and responsibilities with it, and that in fact being a domiciled resident of my province means that I have a greater stake in it. The most valuable resource on Prince Edward Island is not the possible oil and gas off our coast, not the possible uranium, and there has been some indication it has been found ... but the top ten inches of our soil. That is the most valuable aspect to us in how we are going to survive in the years to come.”

On many public occasions, I found myself listening, and listening some more, to numerous Islanders from many diverse backgrounds speak from prepared notes – and often with no notes – in a passionate and caring way about the land and the soil. It was a most rewarding and reassuring experience to realize that there were so many individuals and groups prepared to voice their opinions.

Besides the verbal exchanges which took place during the public meetings, the Commission received many written submissions. In fact, even walking down the street, individuals, some of whom I did not know, would come up to me and offer comments. The most frequent were: “You know, Islanders love their land”; and “Of course, you know the land history of this province.”

We have much to be grateful for on Prince Edward Island – perhaps most importantly, the fact that we are a distinct legal and political jurisdiction. History, geography and past political events have made us a separate province with all the rights, benefits, responsibilities and opportunities that go along with our status. If we were part of a Maritime Union, or part of *Atlantica* – an amalgamation of the four Atlantic Provinces – there would be no *Lands Protection Act*.

As an island, our land base is limited and, if anything, it will likely diminish over time due to the forces of nature. Unlike the vast open spaces of other provinces, ours is densely populated, with

little public land ownership. Prince Edward Island has a unique presence to it, with a strong sense of community, and little distinction between rural and urban.

As a result, we Islanders are in a unique situation – we’ve inherited the gift of jurisdiction as an island province. It is a valuable gift, one not to be underestimated or overlooked, but rather to be cherished as the special gift that it is.

One of the most disturbing aspects of my tenure as Commissioner was to hear, on occasion, comments that failed to acknowledge that, as residents of this place, we should all be on the same side when it comes to caring what happens to the land. We need to listen more intently to differing points of view, and we ought to strive for consensus on issues.

This province cannot withstand the effects of land grabbing experienced elsewhere in the world. We need the *Lands Protection Act* to protect us from the incredible wealth of people who live just beyond our borders and see our land as nothing more than a commodity to be bought and sold, like silver or gold.

The time is here – if indeed it has not already passed – for creative, wise and visionary leadership; to try new and perhaps even some old ideas, on how to protect, enhance, sustain and assist our rural communities and our agricultural industry.

Attached to my comments are sixteen quotations by Islanders that caught my attention. I could have included countless more; such was the quality of the submissions received. I would draw your attention to the last quote; it came from a young person who is involved in rural life and who offers this plea for leadership:

“I am hopeful that you [Mr. Carver] will be forward thinking in your recommendations. PEI needs someone to envision a future for us that is beyond the imagination of most at the moment.”

During the public consultations and through this report, I have attempted to provide leadership and vision on the issue of who owns the land. I will leave it to others to decide whether this Commission has succeeded.

This is not the time for timid spirits. Even if some efforts may not succeed, we must all try to do “What’s best for the land!”

Horace B. Carver, Q.C.
Commissioner

There is a very real need to ensure that farming, the main economic driver in the province, remains competitive, and that outdated legislation does not impede growth and efficiency in the sector. Ironically, the very Act that was developed to preserve the family farm, has now become restrictive for Island farmers. Left unchanged it will be an impediment to sustainable farming by Island farmers.

Nowhere is the protection and nurturing of the land more obviously a public good than in the need to preserve farmland and the need to keep that farmland in diversified food production.

We believe that one of the biggest challenges to the LPA is communication. There are many producers who are frustrated as they do not have a clear understanding of the rules nor do they know how to contact someone who may help them understand.

In summary, as to the subject of your report related to the expansion of legal land holding limits as proposed by the PEIFA, I would offer the following observation: at the end of the process, the practical effect of raising land limits will serve only to change the capacity for future market-driven growth.

Prince Edward Island is blessed in many ways; with a temperate maritime climate, rich, fertile soils, accumulated cultural wisdom of the land and sea, established rural community infrastructure, land holding limits and laws, and the power of jurisdiction.

The Island's scenic landscape is a key element of the province's overall image and has contributed greatly to the "brand" that is Prince Edward Island. The landscape has clear economic value, being a major motivator for visiting tourists and, as such, needs to be protected.

The general public are unaware of just how challenging a farmer's career can be – Oh! Should they walk in a farmer's boots for a day, they'd be more respectful and thankful for the bountiful amount of food that seemingly appears on grocery shelves without effort.

In conclusion, I'll say simply that the present generation of Islanders holds this, our homeland – and our home's land – in trust. In this sense, it belongs to all of us. And without strong and enlightened public action, the erosion of stewardship, of landscape, of identity, will simply continue. It's time for us to draw a line – in the land!

*How the land is used is the most important question.
Farmers who have the financial resources look after the land very well.*

*Our experience has led us to believe that the Lands Protection Act and its regulations
are the greatest make work program for lawyers and accountants
that has ever been created on this Island.*

*In conclusion, we have few resources here. We should extract maximum benefit
from those we do have. Whatever changes the next 50 or 100 years bring to rural PEI
– even if there is no one living here and every church, school and hospital
between East Point and Charlottetown is closed
– even in this worst-case scenario – I believe the need for Island land
to be under the control of the citizens of Prince Edward Island will endure.*

*We need to take some time to reflect on the miracle that is this island
and on how important it is to maintain its ecological integrity.
We have to work with nature and not against it;
we have to love and respect the island like a dear friend or family member
– it is no less valuable to our future.*

*In a perfect world where agriculture products were valued
for what they are truly worth
there would be no need for economies of size.*

*The one issue I feel strongly about is the ability for non-residents
to own large pieces of our island, particularly waterfront.
If you are not living here and supporting our island economy
then there is no real benefit to our island economy.*

*I live in a small rural coastal community on P.E.I.
I want my community to be vibrant and healthy ...
that is sustainable and that depends on farming and fishing
and is proud to be engaged in and have ownership of these important industries.*

*I am hopeful that you will be forward thinking in your recommendations.
PEI needs someone to envision a future for us
that is beyond the imagination of most at the moment.*

INTRODUCTION

CONTEXT

On November 13, 2012, the Executive Council of Prince Edward Island established a commission of inquiry to review the *Prince Edward Island Lands Protection Act* (the Act), and appointed Horace Carver, Q.C., to act as the Commissioner. The Commissioner was appointed under the *Public Inquiries Act* to inquire into, examine, conduct research, consult with Islanders, and make recommendations related to the *Land Protection Act*.

TERMS OF REFERENCE

The Commissioner was directed to examine, inquire into and report regarding:

- 1. The adequacy of existing aggregate land holding limits given changes in agriculture, provincial land use and ownership trends, and rural communities;**
- 2. Options for reducing red tape and regulatory requirements while ensuring that the Act can be effectively administered and enforced;**
- 3. Legislative concerns that have arisen involving such issues as land holding limits as they apply to utilities; application thresholds as they apply to multiple owners; and the information and deeming requirements for non-profit corporations; and**
- 4. Any other matter the Commissioner deems appropriate to review and bring to the attention of Executive Council.**

Executive Council further directed the Commissioner to seek the views of individuals and organizations concerned with the subject matter of the inquiry and empowered him to:

1. Adopt such procedures and methods as he may deem appropriate for the proper conduct of the inquiry;
2. Exercise all powers conferred upon him by the *Public Inquiries Act*; and
3. Seek and expect such assistance of officers and employees of the departments and agencies of the Government of Prince Edward Island in any way he may require for the conduct of the inquiry.

Executive Council directed that the inquiry be established as of January 1, 2013 and that the Commissioner present a final report of findings and recommendations to Executive Council by June 30, 2013.

PROCESS

Following his appointment, the Commissioner developed a research and consultation plan with the assistance of staff of the Municipal Affairs and Provincial Planning Division of the Department of Finance, Energy and Municipal Affairs.

In January, the Commission launched its website and began posting notices of public meetings, as well as relevant documents. Public meetings were held in Vernon River, Morell, Montague, O'Leary, Alberton, Summerside, Charlottetown (2), Souris, Kensington, Kinkora, North Rustico, Murray Harbour, Crapaud, and Wellington.

Approximately 600 people attended the fifteen public hearings; there was limited coverage by print media, radio and television. Each meeting began with a brief introduction by the Commissioner. This was followed by formal presentations by groups and individuals, then a general discussion period during which the Commissioner invited all present to express themselves on topics covered by the terms of reference.

A total of 134 written submissions were presented to the Commission, either at the fifteen public meetings, or by mail or email. The list of written submissions by individuals, corporations and groups is shown in Appendix I. Several individuals made more than one written submission.

In addition to the public meetings, the Commissioner was invited to speak to meetings of the ADAPT Council, the Federation of Agriculture, the Soil and Crop Improvement Association, the Prince Edward Island Young Farmers, and the National Farmers Union. Approximately 350 people attended these meetings.

The Commissioner also met with a small number of groups and individuals, including representatives of provincial government departments and agencies that were asked to respond to specific questions. The Commission consulted experts in subject matter areas pertaining to the terms of reference. Finally, the Commission conducted its own research into a number of questions. The list of individuals and groups consulted is shown in Appendix II.



OVERVIEW

REVIEW OF SIGNIFICANT LEGISLATIVE CHANGES

The following historical overview of the *Lands Protection Act* is based on information gleaned from a variety of sources, primarily provincial government departments and agencies, and the reports of legislative committees and public commissions.

Pre-1971

Land ownership policy has shaped the essential character of Island society. Since 1765, the issue of absentee landlords and the concentration of ownership in the hands of a few people has dominated Island politics. The passage of the *Compulsory Land Purchase Act* in 1875, which limited land ownership to 500 acres per individual, hastened the century-long struggle to end absentee landlord ownership.

Prince Edward Island has enacted many pieces of legislation to restrict non-resident land ownership, the first of these dating back more than 150 years. In 1859, the colony passed the *Act to Enable Aliens to Hold Real Estate*, which allowed non-residents to own up to 200 acres of land. In 1939, the Act was modified to allow non-Canadians to own more than 200 acres at Executive Council discretion. In 1964, the *Real Property Act* was amended to restrict land purchases by non-Canadians to 10 acres or 5 chains (330 feet) of shore front, unless authorized by Executive Council. There is little evidence, however, that any of these restrictions were enforced.

1971-1981

In 1971, the Legislative Committee on Land Acquisition and Legal Transfer to Non-Resident Corporations and Private Individuals tabled a report documenting concerns about non-resident purchases of large acreages of Island real estate, especially prime waterfront. As a result, the *Real Property Act* was amended to require Executive Council approval for all non-resident purchases of 5 chains (330 feet) of shore front or of 10 acres or more of land.

The *Real Property Act* was amended again in 1974, amid growing concerns about vertical integration by food processors and suspicions that individuals were establishing corporations for the purpose of buying land. The change required all corporations, resident and non-resident, except farm corporations, to apply to purchase more than 10 acres of land or 5 chains (330 feet) of shore front. At the same time, the *Planning Act* was amended to enable government to prevent subdivision development on land owned by non-residents.

Between 1974 and 1980, the provincial government expanded regulations dealing with corporate land control after the report of the Land Use Commission on Non-Resident Corporate Land Ownership identified compliance problems.

The federal government included property rights in initial drafts of the *Canadian Charter of Rights and Freedoms* but, through the difficult repatriation negotiations in 1980 and 1981, Prince Edward Island argued successfully that land was this province's most important resource and that the province had to retain the legal ability to limit and control ownership. Consequently, property rights were not present in the final Charter provisions.

1982-1992

In 1982, the Legislative Standing Committee on Agriculture recommended aggregate land limits of 1,000 acres for individuals and 3,000 acres for corporations consisting of three equal shareholders, except farm corporations which were defined as those consisting of *bona fide* resident farmers. It also recommended that all land ownership controls be brought together into a single piece of legislation. These became the essential elements of the 1982 *Lands Protection Act*.

In 1986, the provincial government's legal interpretation of the term 'land holdings' was challenged. The challenger argued the term should apply only to land actually being used by the landholder, and that land leased out or rented out should not be included in aggregate land holdings. In other words, a corporation could have control of 5,000 acres of land, as long as it leased out 2,000 acres to another party.

The matter was referred to the provincial Supreme Court, which upheld the interpretation put forward by the challenger (Prince Edward Island Supreme Court 1987 40 D.L.R. (4th) 1 [Reference Re *Lands Protection Act*]). The Act as written meant a landowner would not have to count any portion leased to others as part of the aggregate land holdings.

In 1988, the Act's limits on corporate and non-resident land holdings were amended downward, from 10 acres to 5 acres, and from 5 chains, or 330 feet of shore front, to 165 feet.

In the early 1990s, the *Lands Protection Act* was amended to eliminate the distinction between farm corporations and other corporations. Since that time, farm corporations have required Executive Council approval to acquire more than 5 acres of land or more than 165 feet of shore front.

As part of the constitutional package which led to the failed Meech Lake Accord, the federal government proposed that the Canadian Charter of Rights and Freedoms be amended to guarantee property rights. Again, Prince Edward Island came out against the proposal.

Prince Edward Island argued that provincial legislation regulating land ownership and use would be nullified by such a constitutional guarantee. It cited the threat to land use planning and municipal laws, real and personal property laws, environmental laws, and health and safety laws.

Prince Edward Island questioned whether an entrenched right to property might affect the ability of a province to control the use of privately owned lands, to protect the environment, or to protect communities. As was the case in 1981, property rights were excluded from the *Canadian Charter of Rights and Freedoms*.

In 1991, Executive Council delegated its decision-making powers under the Act to the Island Regulatory and Appeals Commission (IRAC). In 1992, this decision was reversed, and IRAC reverted to its current role: providing advice and recommendations to Executive Council, and enforcing the Act.

1993-1999

In 1993, the Special Legislative Committee on the *Lands Protection Act* conducted an extensive review. The Committee was charged with examining the desirability and appropriateness of land ownership limits on individuals and corporations, both resident and non-resident; the optimum size of farms; the province's potato production capability; and the role of processors within the potato industry.

The Committee found that land ownership limits had had a limited impact on most farm

operations up to that point, but predicted the limits would have a greater effect as time went on and farms got larger. Strong themes ran through the report, including:

1. Maintain ownership limits;
2. Keep good land in agriculture, possibly through zoning;
3. Control non-resident land ownership;
4. Control corporate concentration of food production;
5. Clarify the definition of land holding;
6. Remove provisions for special permits;
7. Allow exemptions under special circumstances;
8. Set up an annual reporting system for land holdings, to be overseen by IRAC; and
9. Return authority for decision-making, investigation and enforcement to IRAC.

The Committee made a number of recommendations meant to tighten the administration of the Act; many were implemented between 1995 and 1998. One of the most significant changes affected the lease-out provision. Since 1995, leased land is deemed to be in the possession of both the lessor and the lessee, and it is counted towards the aggregate land holdings of both. This is the so-called ‘double-counting’ or ‘lease-in-lease-out’ provision.

The following key recommendation was not implemented however:

“Administration of the Act should remain with the Island Regulatory and Appeals Commission, preferably in a division solely responsible for the Act. IRAC should be empowered to

exercise the Act's provisions regarding investigation and enforcement.”

Executive Council retained its authority for decision-making and delegated investigation and enforcement of the Act to IRAC.

In early 1998, the Standing Committee on Agriculture, Forestry and Environment held public hearings regarding the Act and made a number of recommendations. A key recommendation was based on the Committee’s finding that the definition of ‘aggregate land holding’ had not kept pace with increasing farm size. It was felt that the definition did not recognize that many land holdings are not suitable for agriculture.

The Committee recommended that the definition of ‘aggregate land holding’ be amended to exempt land not in agricultural production. The amendment would have permitted persons and corporations to hold 1,000 acres and 3,000 acres, respectively, of land in agricultural production, plus an additional amount of land not suitable for agricultural production. However, the government of the day decided otherwise, and the definition of ‘aggregate land holding’ was not changed.

As part of the 1998 amendments, a purpose section was added to *the Lands Protection Act* as subsection 1.1:

The purpose of this Act is to provide for the regulation of property rights in Prince Edward Island, especially the amount of land that may be held by a person or corporation. This Act has been enacted in the recognition that Prince Edward Island faces singular challenges with regard to property rights as a result of several circumstances, including:

- (a) **historical difficulties with absentee land owners, and the consequent problems faced by the inhabitants of Prince**

Edward Island in governing their own affairs, both public and private;

- (b) the province's small land area and comparatively high population density, unique among the provinces of Canada; and**
- (c) the fragile nature of the province's ecology, environment, and lands and the resultant need for the exercise of prudent, balanced, and steadfast stewardship to ensure the protection of the province's ecology, environment, and lands.**

Another 1998 amendment did away with special permits enabling individuals and corporations to hold land in excess of the aggregate land holding limits, the so-called 'grand-fathering' provision. In order to make the transition easier, it gave landowners up to nine years to eliminate their excess holdings.

2000-Present

In 2007, the Island Nature Trust requested a change in the Regulations to exempt some of its land holdings from the aggregate limits. Government agreed, and decided that any land holding designated by Executive Council as a natural area under the *Natural Areas Protection Act* should be exempted. The principal beneficiary of this amendment is the Island Nature Trust but, with the change, any landowner may apply to have land designated under the *Natural Areas Protection Act* and thereby receive the exemption.

Some farmers complained that significant portions of their land holdings were rendered unusable by the introduction, in the late 1990s and early 2000s, of watercourse buffer zones, and other changes to the *Environmental Protection Act* and Regulations. They argued that environmentally significant land holdings such as high-sloped land, erosion control structures, hedgerows, permanent grassed

headlands, wetlands, woodland, and watercourse buffers should not be counted as part of individual or corporate aggregate land holdings.

In December 2009, the Commission on Land and Local Governance released its final report. It made a similar recommendation to the 1998 Standing Committee on Agriculture, Forestry and Environment: that individuals and corporations be permitted to own or lease 1,000 and 3,000 acres, respectively, of arable land, meaning land in agricultural production. The Commission noted that: "Government, in consultation with the agricultural community, should be able to reach a consensus on the most reasonable mechanism to be used in determining arable acreages." The Commission noted that the province has one of the best property mapping systems in Canada.

Government responded by amending the *Lands Protection Act* Exemption Regulations. These Regulations allow an individual to exempt up to 400 acres and a corporation to exempt up to 1,200 acres of land that is certified by a government agency to fall within an environmentally significant land holding classification, as defined in the Environmental Exemption Regulations. It is the same approach as that applied to the Island Nature Trust under the *Natural Areas Protection Act*. However, it is not clear that the approach recommended by the Commission on Land and Local Governance would have required landowners to apply for exemptions through an extensive paperwork exercise, or have permitted government agents to assess the requests through on-site visits.

THE CURRENT LEGISLATIVE FRAMEWORK

While the purpose of the Act is clear and easy to understand, the legislative framework, consisting of the Act and the Regulations, is very complex and difficult to understand, even for those who deal with it on a regular basis. Few individuals and corporations make application, or even complete mandatory reports, without help from accountants and lawyers.

The legislative framework consists of a total of 88 pages: the Act itself is 13 pages long (<http://www.gov.pe.ca/law/statutes/pdf/L&05-2.pdf>); the Forms Regulations, 47 pages (<http://www.gov.pe.ca/law/regulations/pdf/L&05-2.pdf>); the Exemption Regulations, 22 pages (<http://www.gov.pe.ca/law/regulations/pdf/L&05-1.pdf>); and the Land Identification Regulations, 6 pages (<http://www.gov.pe.ca/law/regulations/pdf/L&05-3.pdf>).

The essential elements of the Act and Regulations are as follows:

The Lands Protection Act

1. Key definitions: aggregate land holding, corporation, land holding, possession of land (as lessor and as lessee), resident person, and shares in a corporation;
2. Purpose of the Act;
3. Aggregate land holding limits of 1,000 acres for a person, and 3,000 acres for a corporation having three equal shareholders;
4. Requirement for a non-resident person or any corporation to obtain Executive Council permission to hold more than 5 acres of land or 165 feet of shore frontage, and the process for doing so;
5. Divestiture schedule requiring persons and corporations that held more than the permitted aggregate land holding on December 31, 1994 to get rid of their excess land holdings within nine years from the stated date in a permit issued by Executive Council;
6. Role of IRAC to administer the Act and Regulations, and to make recommendations to Executive Council;
7. Executive Council authority to adopt policies regarding ownership, possession, occupation or use of land, and the requirement to publish these in the Royal Gazette;
8. Executive Council authority to impose conditions on a Land Identification Permit issued to a non-resident or a corporation given permission to acquire more than 5 acres of land or 165 feet of shore frontage;
9. Requirement for a person holding more than 750 acres or a corporation holding more than 2,250 acres to file an annual disclosure statement with IRAC;
10. Powers of the Minister to issue and enforce orders, and to conduct investigations;
11. Maximum penalties;
12. Power of the Supreme Court to ensure compliance;
13. Responsibility of corporate officers;
14. IRAC authority to make its own regulations and to impose penalties;
15. Executive Council authority to make Regulations; and

16. Requirement for Executive Council to publish exemptions granted to aggregate land holding limits.

The Forms Regulations

1. Application by or on behalf of a non-resident pursuant to section 4 of the *Prince Edward Island Lands Protection Act*;
2. Application by or on behalf of a corporation pursuant to section 5 of the *Prince Edward Island Lands Protection Act*;
3. Land holding disclosure statement for a person pursuant to section 10 of the *Prince Edward Island Lands Protection Act* - short form;
4. Land holding disclosure statement for a corporation pursuant to section 10 of the *Prince Edward Island Lands Protection Act* - short form;
5. Land holding disclosure statement for a person pursuant to section 10 of the *Prince Edward Island Lands Protection Act*;
6. Land holding disclosure statement for a corporation pursuant to section 10 of the *Prince Edward Island Lands Protection Act*;
7. Self-calculating land holding disclosure statement for a person;
8. Self-calculating land holding disclosure statement for a corporation; and
9. Application on behalf of a non-resident or corporation pursuant to clause 5.3(1)(b) of the *Prince Edward Island Lands Protection Act*.

The Exemption Regulations

1. Exempting land holdings acquired by gift, devise or inheritance;
2. Exempting cooperative ventures and their shareholders from the aggregate land holding limit for corporations;
3. Exempting municipalities, municipal corporations, and their shareholders from the requirement to obtain Executive Council permission to hold more than 5 acres of land or 165 feet of shore frontage;
4. Exemptions for the following corporations (the year each individual exemption was granted is shown in brackets):
 - Eastisle Shipyard Ltd. (1991, 1994);
 - Irving Pulp and Paper Ltd. (1992, 1994, 1995, 1995, 1999);
 - Community Hospital O'Leary (1992);
 - Strait Crossing Development Inc. (1993, 1994, 1995);
 - Malpeque-Westisle Fertilizers Ltd. (1994);
 - O'Leary Community Health Foundation (1994);
 - Borden-Carleton box fabrication facility (1995);
 - Blueberry processing facility - Lot 39, Kings County (1995);
 - Trigen Energy Canada Inc. (1995);
 - McCain Fertilizers Ltd. (1995, 1996, 1997);
 - McCain Foods Ltd. (1996);
 - McCain Produce Inc. (1997);
 - Legacy Hotels Canadian Pacific Properties Inc. (1997);
 - Summerside Golf Club Inc. (1999);
 - J.D. Irving Ltd. (2000, 2004, 2005);
 - Morell Lions Club Inc. (2004);
 - Ocean Choice PEI Inc. (4) (2004);
 - Lower Montague Trailer Park Cooperative Ltd. (2004);

- Atlantic Lottery Corporation Inc. (2004);
 - The Nature Conservancy of Canada (Boughton Island) (2005);
 - Cavendish Agri Services Ltd. (2006);
 - Cavendish Farms Corporation (2006); and
 - 7556462 Canada Ltd. (lease from Emerald Isle Farms Ltd.) (2) (2010).
5. Any land holding designated under the *Natural Areas Protection Act*; and
 6. Environmentally significant land owned by a person or corporation, defined as: high-sloped land converted to tree cover; approved erosion control structures; approved hedgerows; approved permanent grassed headlands; land designated in the PEI Wetland Atlas; forested land; and land used as a required watercourse or wetland buffer.

The Land Identification Regulations

1. Definition of non-development use as forestry, wildlife, agriculture, recreation, permanent or seasonal residence, but not commercial or industrial use, or subdivision;
2. Application of the Land Identification Regulations (LIR) to land acquired by a non-resident person or any corporation (more than 5 acres or 165 feet of shore frontage), and to all land sold by the provincial government or one of its agencies;
3. Objective to prevent development of 'identified' land;
4. Listed exemptions;
5. Requirement to register a land identification agreement (LIA) with the

- Registrar of Deeds, and the particulars of the agreement;
6. Duration of the LIA (minimum 11 years), and procedure for requesting termination; and
 7. The form of the LIA to be signed by the covenantor and the Minister.

WHAT IS AN 'AGGREGATE LAND HOLDING'?

The *Lands Protection Act* states that no person shall have an aggregate land holding in excess of 1,000 acres, and no corporation having three equal shareholders shall have an aggregate land holding in excess of 3,000 acres. If this definition seems straightforward in theory, it is far from being so in practice.

In relation to a person, aggregate land holding includes:

1. All land holdings of that person, and of the person's minor children;
2. The relevant amount of land holdings of any corporation in which the person, or any of them, hold more than 5 per cent of the shares; and
3. The relevant amount of land holdings of any other corporation in which more than 5 per cent of the shares are held by a corporation in which the shareholder or the shareholder's minor children own more than 5 per cent of the shares.

In relation to a corporation, aggregate land holding includes:

1. All land holdings of that corporation;
2. All land holdings of any person, and of the person's minor children, who holds

more than 5 per cent of the shares in that corporation;

3. All land holdings of any other corporation that holds more than 5 per cent of the shares in that corporation; and
4. The relevant amount of land holdings of any other corporation in which more than 5 per cent of the shares are held by:
 - a. That corporation;
 - b. A person referred to in paragraph 2; or
 - c. A corporation referred to in paragraph 3.

Next comes the challenge of defining what is meant by the term ‘land holding’. According to the Act, a land holding is defined as:

An interest conferring the right to use, possession or occupation of land, but does not include land or an interest in land acquired by a bank, trust company or other financial institution in the ordinary course of its business by way of security for a debt or other obligation.

The Act also states that the definition of ‘land holding’ is to be interpreted further, as follows:

1. At any time before January 1, 1996, land under lease to another person or corporation shall be deemed to be in the possession of that other person or corporation;
2. On or after January 1, 1996, land under lease to another person or corporation shall be deemed to be in the possession of both the lessor and lessee.

The above calculation of aggregate land holding means, in practical terms, that land leased in and land leased out is considered part of the ‘aggregate land holding’ of both

the lessor and the lessee. This is the so-called ‘double-counting’ provision.

ADMINISTRATION AND ENFORCEMENT – ROLE OF IRAC

The Island Regulatory and Appeals Commission (IRAC) is responsible for the general administration of the *Lands Protection Act*, including making recommendations to Executive Council on applications for land purchases and leases governed by the Act, for monitoring the land holdings of large landowners, and for enforcing the Act. IRAC’s responsibilities are outlined in Section 8 of the Act.

A non-resident person or any corporation, resident or non-resident, must make application to IRAC if the person or corporation will have an aggregate land holding in excess of 5 acres, or shore frontage in excess of 165 feet.

The application for a land purchase or lease must include the following:

- A completed application form;
- An orthophoto or GeoLinc map of the parcel(s), outlined in red;
- A legal description of the subject parcel;
- If the applicant is a non-resident person, or a resident or non-resident corporation, details of recent advertising of the land on the local real estate market; and
- A fee of \$500 or 1% of the agreed purchase price, whichever is greater.

Factors considered by IRAC may include:

- Aggregate land holding
- Shareholder structure
- Residency status
- Number of parcels or acreage

- Shore frontage
 - Concentration of ownership
 - Intended use
 - Land fragmentation
 - Local advertisement
 - Need for identification
 - Value of the land
 - Other parcels owned by the applicant
 - Capability for agriculture
 - Capability for forestry
 - Ecological value
 - Coastal access
 - Potential economic impact
 - Local significance
 - General land use in the area
 - Speculative intent or nature
 - Impact on neighbouring land values
- a parks use by federal, provincial or municipal government; or
 - a residential use by the owner;
 - That land be identified for non-development use under the Land Identification Regulations;
 - That land be consolidated with an adjoining parcel or parcels of land;
 - That the applicant become a resident within a specified time period;
 - That a buffer be provided and maintained; or
 - That land be managed in a specified manner.

Applications have been denied for one or any combination of the following reasons:

The application is analyzed by IRAC staff, and is then reviewed by the IRAC Commissioners in a private hearing which is not open to the applicant or the public. IRAC makes a decision and forwards the application, together with its non-public recommendation, to Executive Council. Council considers IRAC's recommendation and, given its authority under the *Lands Protection Act*, may approve, reject or substitute its own decision. Executive Council meetings are not open to the applicant or to the public, and the Act provides no mechanism to appeal IRAC or Executive Council decisions.

Executive Council may approve a land purchase or lease application with conditions which may include any one or a combination of the following:

- That land not be subdivided except for:
 - agricultural, forestry or fisheries production;
 - a conservation use pursuant to a designation as a natural area, archaeological site or heritage place;
- Aggregate land holdings were beyond the limits set out in the Act;
- Land holdings of a person or corporation in a particular area of the province were at a level beyond what was believed to be in the public interest;
- Land flipping and speculation appeared to motivate the transaction;
- The purchase would have resulted in the control of the majority of the shore frontage of a local pond being held by a non-resident person;
- Government wanted to provide an opportunity to local residents and farmers to purchase the land;
- A significant proportion of land or shore frontage in a local area was already controlled by non-residents; or
- An intention to circumvent the land identification program appeared to motivate the transaction.

SHARED VALUES

At several public meetings, the Commissioner expressed the hope that farmers and the farm organizations that represent them could agree on many of the issues that led to the current review of the *Lands Protection Act*.

A list of ‘shared values’ what could also be described as the founding elements of a balanced approach was presented to the annual meeting of the National Farmers Union on April 11, just as the Commission neared the end of its public meetings. The ten shared values were drawn primarily from what the Commissioner perceived to be

common points of agreement between the National Farmers Union and the Federation of Agriculture, and they have been endorsed by both organizations.

It is simply not possible to achieve consensus on all issues that fall within the Commission’s mandate. The positions of the two general farm organizations are diametrically opposed on the issue of aggregate land holding limits. However, there is broad agreement in the agriculture community on the shared values outlined below.



Farm organizations and the Commission believe it is important to present these shared values to government and to all Islanders to let them know where these two farm organizations stand in agreement:

1. The land is a public trust and, because of this, all Islanders have an interest in its stewardship;
2. The water, the soil and the air are also public trusts, and all who own land have a responsibility to protect them;
3. The stated purpose of the *Lands Protection Act* is still relevant today, and there is a continuing need for this type of legislation;
4. Some form of government-supported land banking system is needed to enable more individuals to get into farming;
5. Environmentally-sensitive lands ought not to be farmed, and they must be excluded from the aggregate land limits under the *Lands Protection Act*;
6. Farmers must be encouraged to adopt better crop rotation practices, through technical and financial assistance and better enforcement of the *Agricultural Crop Rotation Act*;
7. New ideas are needed to deal with the difficult succession issues which farmers and farm corporations routinely encounter;
8. The rural vistas and viewscapes which Islanders and visitors enjoy must be protected and preserved;
9. Large-scale purchase of land, also known as ‘land grabbing’, would be harmful to the interests of Prince Edward Island and must be guarded against; and
10. Farmers need to educate non-farmers on why farming is essential to our everyday lives and to life itself.



AGGREGATE LAND HOLDING LIMITS

BACKGROUND

The Commission recognizes there is more to the topic of aggregate land holding limits than their relationship to farm size. The history of land ownership legislation shows that successive governments have responded to Islanders' concerns about other related issues: non-resident ownership; corporate vertical integration; purchase and sale of shore frontage; and the amount of land that can be owned by individuals and corporations not involved in farming. However, the Commission heard clearly in the course of its work that the dominant issue remains, as it was in 1982, land ownership for the purpose of agricultural production.

Farm Size – Historical Trends

In 1981, the year before the *Lands Protection Act* came into law, there were 3,154 farms on Prince Edward Island, comprising a total land area of just under 700,000 acres. Average farm size was 222 acres. In the same year, 819 farms reported some acreage in potatoes. Just under 64,000 acres of potatoes were grown in 1981, an average of 78 acres per potato farm.

Fifteen years later, in 1996, there were 2,217 farms, comprising a total land area of 655,000 acres, and average farm size had increased to just under 300 acres. That year, 652 farms grew 108,000 acres, or an average of 166 acres per potato farm. Also in 1996, figures show that 77 farms were larger than 1,120 acres. Maximum potato acreage was recorded in 1999 at just less than 113,000 acres.

In 2011, the most recent year for which comparable figures are available, the number of farms had declined to just under 1,500,

comprising a total land area of 595,000 acres; average farm size had increased again to almost 400 acres. The number of farms reporting potatoes had declined to 300, and total acreage to 86,500 acres, resulting in average potato acreage of 288 acres per farm. In 2011, the number of farms reporting acreage greater than 1,120 had grown to 120.

What changed between 1981 and 2011?

1. Total acreage in agriculture declined 15%;
2. The number of farms declined 53%;
3. The number of farms reporting potato acreage declined 63%;
4. Average farm size increased 80%; and
5. The average acreage grown by a potato farm increased 269%.

These figures show clearly that agriculture has undergone significant changes in the thirty-one years since the *Lands Protection Act* was enacted in 1982.

It is not known how many farms were at or near maximum aggregate land holding limits for persons and corporations in 1982. According to figures provided by IRAC, in 2011:

- 129 individuals had holdings of 750 acres or more; of these, 26 were within 50 acres of the limit; and
- 29 corporations had holdings of 2,250 acres or more; of these, 10 were within 50 acres of the limit.

Based on input received by the Commission from a number of sources, it can reasonably be assumed that 95% of individuals and corporations within 25% of the limit in 2011 were potato farms. This would mean that, of the 158 individuals and corporations listed by IRAC, 150 were potato farms. If so, one half of the 300 farms reporting potato acreage in 2011 were within 25% of the limit.

Input received by the Commission from farm groups and by individual farmers indicated that the aggregate land holding limit is primarily a potato industry issue. These numbers prove that to be the case.

Looking at Strategies to Find Answers

Since 2008, the provincial government has consulted with Islanders regarding land use, local governance, environmental sustainability, and economic development. Priorities have been identified for rural development, agriculture, agri-food and tourism. The Task Force on Land Use Policies is presently holding public consultations; it will recommend a set of provincial land use policies for consideration by government.

As a first step, the Commission reviewed the most recent publications produced by government departments, advisory groups, research institutions, and industry organizations to get a better sense of the ‘big picture’ as it relates to land protection and ownership. Particular attention was paid to strategies having a direct connection to the stated purpose of the *Lands Protection Act*.

The *Rural Action Plan* (http://www.gov.pe.ca/photos/original/FARD_REDS.pdf) released by the provincial government in early 2010, includes six main goals: enhance business development; strengthen primary sectors and natural resources; expand tourism; promote environmental conservation measures;

support community development and capacity building; and support human resources, education and essential services. One of the goals calls for increased support for agricultural innovation.

Under the general heading of “Environmental Conservation and the Rural Economy”, the *Rural Action Plan* supports the amendment to the *Lands Protection Act* which allows for the exemption of environmentally significant land holdings. The *Rural Action Plan* goes on to state the following:

“Depending on how extensively the agriculture industry takes advantage of this opportunity, a projected 50,000 acres of highly sensitive land could become protected, while another 50,000 acres of high quality land will return to production.”

When it comes to attracting visitors, the Department of Tourism and Culture defines the Prince Edward Island brand as one highlighted by red earth and cliffs, beautiful beaches, rolling hills, and our reds, greens and blues. In September 2010, the Tourism Research Centre of the University of Prince Edward Island released a report called *Panel Research – Rural Tourism* (http://trc.upei.ca/sites/trc.upei.ca/files/Rural_Tourism_Sept13_Final.pdf). Survey participants were asked to choose from a list of benefits and opportunities commonly associated with rural destinations, and to rate how important they were when choosing to travel to a rural destination. The items deemed most important – scoring 4 or higher out of 5 – were observing natural beauty, pastoral settings, and scenic vistas.

Government recently released a foundation document entitled *Planning for a Sustainable Future – A Time for Questions* (<http://www.gov.pe.ca/photos/original/susfuture.pdf>). The Environmental Advisory Council will lead the public consultations and

report its findings to government, the intent being to formulate a new provincial sustainable development strategy. Under the heading of Land Use, the following key issues are identified: land under stress; preservation of agricultural land; land abandonment; deforestation; forest conversions; and soil quality degradation.

Turning to agriculture, the Commission carefully analyzed recent strategies for development of the agriculture and agri-food sector. Of particular interest was the relationship between farm size and productivity, between farm size and profitability, and how these relate to sector trends. As well, the Commission wished to learn what government and the agriculture industry considered to be the priorities for future collaboration.

The Prince Edward Island AgriAlliance is an industry-led, not-for-profit company governed by a Board of Directors representing a cross-section of producer, processor, research, government and community leaders. Its mandate is to act as a facilitator in coordinating targeted research and market development efforts with various industry, research, government, and external partners to help advance the future viability of the sector.

In February 2013, the AgriAlliance released the *Innovation Road Map for the Prince Edward Island Agriculture and Agri-Food Cluster* (<http://peiafa.com/assets/Innovation-Road-Map-Feb2013.pdf>). According to the AgriAlliance, the *Innovation Road Map* supports the provincial government's five-year economic development strategy released in 2008: *Island Prosperity: A focus for Change* (<http://www.gov.pe.ca/photos/original/IPS.pdf>), as well as the 2009 Report of the Commission on the Future of Agriculture and Agri-Food, entitled *Growing the Island Way* (http://www.gov.pe.ca/photos/original/af_cmmofagri.pdf).

Island Prosperity: A focus for Change, the province's current economic development strategy, has this to say about agriculture:

“The factors that helped PEI to succeed in the past – supply push, mass production for mass markets, growth through higher volumes, efficiency – reflect a traditional approach which is increasingly obsolete.”

In its conclusion, the 2009 Report of the Commission on the Future of Agriculture and Agri-Food, *Growing the Island Way*, put it this way:

“A ‘vicious circle’ has taken hold, characterized by declining profits, consolidation, and an intensification of operations that is causing negative environmental impacts and losing farmers the respect of the community. Without profit or pride, the next generation of farmers, or ‘new entrants’, is turning away from the industry.”

The AgriAlliance's 2013 *Innovation Road Map* includes an excellent analysis of the economics of potato production, and compares the performance of Prince Edward Island operations to regional and national indicators of profitability. The report states:

“These numbers are of great concern, as the average margins (after CCA [capital cost allowance]) are extremely tight for Island potato farmers, and the data indicates further evidence of a significant PEI-specific challenge in terms of profitability under-performance. Despite healthy revenue for average PEI potato farms, in comparison to other Eastern Canadian potato farms, net operating income is drastically lower. In looking at the

individual years from 2001 to 2010, three of the ten years – 2004, 2005 and 2007 – showed negative average margins (after adjusting for CCA) on PEI potato farms.”

The *Innovation Road Map* also contains an informative analysis of global trends in agriculture and agri-food, and it concludes with a list of six priority areas for advancing innovation, growth and profitability:

- Establish an outstanding AgriFood Innovation System within Prince Edward Island that will serve as the foundation for sustained growth and development of the agri-food sector;
- Benchmark the competitiveness of the province’s agri-food sector, including primary production and value-added processing, and take concrete action to address areas for profitability improvement;
- Accelerate the attraction, creation, and growth of value-added agri-product businesses by providing guidance and advisory support on access to capital, business strategy, research partnerships, and new market development;
- Improve agri-food and agri-product market intelligence, market development, and product marketing;
- Advance agriculture and agri-food sector skills and workforce development; and
- Communicate widely Prince Edward Island’s bold new commitment to the future development of the province’s most valuable industry.

In reviewing these strategic initiatives, the Commission arrived at the following conclusions:

1. The linkages between land ownership and property rights on the one hand, and rural development, tourism, and environmental sustainability on the other hand, are direct

and apparent; in fact, they are interconnected and inseparable;

2. According to the provincial government’s current economic development strategy, the traditional approach of mass production of food for mass markets is becoming increasingly obsolete;
3. The profitability of Island potato farms is of great concern to both industry and government, although the factors causing the decline are not fully understood; and
4. The industry-government alliance is promoting a strategy based on innovation, product diversity, profitability and partnerships.

Questions Regarding the Strategies

The 1,000 and 3,000 acre limits were by far the dominant issue in public meetings held by the Commission. Calls for increasing the limits came mainly from the potato industry, through the Federation of Agriculture and the Potato Board. Not all farmers and not all agricultural organizations called for increasing the limits however. The National Farmers Union opposes any change to the *Lands Protection Act* and Regulations. Among non-farm groups and individuals, the vast majority favoured the status quo.

Two other points of view were expressed:

1. **There still needs to be a limit on how much land a person or a corporation can own and control; and**
2. **The door should be left open for someday lowering the aggregate land holding limits.**

Bearing all this in mind, the question must therefore be asked: If none of the provincial and industry strategies mentioned above calls for increasing farm

size as a way to improve farm profitability, enhance rural development, strengthen tourism, or promote environmental sustainability, on what basis can increasing the aggregate land holding limits be justified?

In this regard, the Commission sought answers to the following questions:

1. What is the relationship between potato acreage and profitability for a potato farm?
2. What is the evidence that the present aggregate land holding limits are having a negative impact on the profitability of individual potato farms?
3. If further consolidation occurs in the potato sector, what impact will this have on employment and contribution to provincial Gross Domestic Product?
4. If further consolidation occurs in the potato sector, what impact will this have on rural communities?
5. How does the *Agricultural Crop Rotation Act* fit into the picture? To what extent is it being enforced? In other words, how many potato producers are in full compliance?
6. Given current aggregate land holding limits under the *Lands Protection Act*, has the *Agricultural Crop Rotation Act* become a deterrent to future growth of the potato sector?
7. Should the *Agricultural Crop Rotation Act* be changed, or can ways be found to use it, in combination with the *Lands Protection Act* and government programs, to encourage better land management practices?
8. What is the impact of the ‘double-counting’ provision that requires landowners to include both land leased in and land leased out as part of their aggregate land holdings? What would be the benefit, if any, of removing the requirement to count land leased out?
9. What are the problems with the Environmental Exemption Regulations introduced in 2009 as they are currently written and enforced? Can they be changed to better reflect the needs of the agriculture industry, or should they be abolished?

EVALUATING THE LEGISLATIVE FRAMEWORK

The Commission consulted broadly to evaluate strengths and weaknesses of the existing legislative framework. While much of the input received came from individuals and organizations at public meetings, the Commission also relied on input from IRAC and the two provincial government departments involved in enforcing certain sections of the *Lands Protection Act* Regulations: the Department of Agriculture and Forestry, and the Department of Environment, Labour and Justice. As well, the Commission consulted with the Department of Agriculture and Forestry regarding the *Agricultural Crop Rotation Act*.

Much of what the Commission heard about problems with the *Lands Protection Act* relates to administration and enforcement, and comes under the heading of ‘red tape’. It will be dealt with in more detail in the next chapter of this report.

Bearing in mind the purpose of the *Lands Protection Act* as stated in subsection 1.1:

The purpose of this Act is to provide for the regulation of property rights in Prince Edward Island, especially the amount of land that may be held by a person or corporation. This Act has been enacted in the recognition that Prince Edward Island faces singular challenges with regard to property rights as a result of several circumstances, including:

(a) historical difficulties with absentee land owners, and the consequent problems faced by the inhabitants of Prince Edward Island in governing their own affairs, both public and private;

(b) the province’s small land area and comparatively high population density, unique among the provinces of Canada; and

(c) the fragile nature of the province’s ecology, environment, and lands and the resultant need for the exercise of prudent, balanced, and steadfast stewardship to ensure the protection of the province’s ecology, environment, and lands,

the Commission offers the following observations regarding its strengths and weaknesses.

STRENGTHS

The aggregate land holding limits of 1,000 acres for individuals and 3,000 acres for corporations were unique among Canadian jurisdictions when they were introduced in 1982. Since then, the *Lands Protection Act* has only been successfully challenged in court once.

The reporting requirements under the Act and Regulations provide important data on land holdings, trends in non-resident ownership, and other matters of interest to government and the public.

From time to time, the Act and Regulations have been amended in response to threats to the intent and purpose of the Act.

The features which tourists continue to find most attractive are the province’s rural character and the visual quality of its landscapes.

Without the Act, significant amounts of land would probably have been bought by non-residents, and there would likely be larger farms.

WEAKNESSES

The 1,000 and 3,000 acre limits have not evolved in response to increasing farm size and the number of operations approaching the aggregate land holding limits; the only exception is the 2009 Environmental Exemption Regulations that allow up to 40% of land holdings to be exempted.

The Act has not kept pace with the evolution of corporate structures, for example, farming operations consisting of multiple corporations, family trusts, and corporations involving voting and non-voting shares.

The Environmental Exemption Regulations are poorly understood and underutilized; according to farmers, the provincial government did little to publicize the initiative or to assess reasons for the poor rate of uptake.

The need to count land leased in and to count land leased out as part of an individual’s or a corporation’s aggregate land holding does not meet the test of common sense, and it undermines the credibility of the Act.

Indicators of environmental health and well-being, including soil and water quality, have declined since the Act came into force.

THE ENVIRONMENTAL EXEMPTION REGULATIONS

The Department of Agriculture and Forestry began processing applications under the Environmental Exemption Regulations in 2010. According to information provided by the Department, staff soon encountered landowners whose aggregate land holdings were in excess of their eligible limit and who had not reported this fact to IRAC. This resulted in applicants submitting ‘exploratory applications’ to investigate how much of their land might be exempted.

Changes were made to the application review process by the Department and IRAC in the spring of 2011. Currently, applications are processed through IRAC first, and this has eliminated the phenomenon of ‘exploratory applications’. It has also made it easier for Department staff to interact with applicants, knowing that IRAC has already dealt with the sensitive issue of excess land holdings, where these come into play.

IRAC described the application process in a letter to the Commission. When an application is received, IRAC uses its data base to compute the maximum allowable exemption, and forwards the application to the Department of Agriculture and Forestry where the land is certified through a separate process. The application is then returned to IRAC, the exempt parcels are recorded, and a confirmation letter is sent to the applicant.

Both the Department of Agriculture and Forestry and IRAC note that the requirement to process exemption applications has significantly increased their workload and has placed an additional burden on staff resources.

The Federation of Agriculture had this to say about the Environmental Exemption Regulations:

“The change that allowed the ability to exempt “environmentally significant” land was a welcome change and reversed some of the reductions noted above. This change was in response to lobbying from the PEI Federation of Agriculture. Unfortunately, there has been little overall uptake on this significant change with less than 10,000 acres being exempted from farmer’s holdings. We hear from farmers there are three reasons for this:

- *The process is cumbersome and an increased regulatory burden with farmers having to meet with the Department of Agriculture and IRAC. One large farm (Wyman’s) had [approximately 1,200 acres of] their land exempted but had the resources to have one employee dedicated for the entire winter to this. This person also met with PEIFA staff several times and they assisted in the process.*
- *There is a level of distrust among farmers of IRAC and their involvement in the process has turned off many farmers.*
- *The application must be from the registered owner of the property and this limits rented acres.”*

The position expressed by the Potato Board was essentially the same as that of the Federation of Agriculture.

The National Farmers Union supports government’s decision to apply the 1,000 and 3,000 acre aggregate land holding limits to arable land. However, the NFU had this to say about accountability:

“It is totally unacceptable to the National Farmers Union that proponents of relaxing the Lands

Protection Act are complaining about the accountability required to safeguard acreage limits.”

The Commission has come to the conclusion that the Environmental Exemption Regulations cannot be made to work in their present form. The target group of landowners, those within 25% of the aggregate land holding limits have either not used the exemption or have used it at a great cost. Farmers don't like the system, it is not what was intended, and the exemption approach is simply not achieving its objectives.

The Commission recommends:

- 1. That the provincial government do the following: repeal Section 35 of the Regulations in its entirety; modify Section 2 of the *Lands Protection Act* to make it clear that the 1,000 and 3,000 acre aggregate land holding limits apply to arable land only; and accept as proof of compliance the farmer's signed declaration of the acreage of arable land owned and leased.**

If the provincial government does not see fit to accept the above recommendation, strong measures must be taken to inform landowners of the process for acquiring exemptions under subsection 35(1) of the Environmental Exemption Regulations. In addition, the responsible departments and IRAC must be directed not to use information acquired as the result of an exemption application to penalize a landowner found to be over the aggregate land holding limit at the time the application is made.

If the above recommendation is not accepted, an issue raised by the Federation of

Agriculture must nevertheless be addressed. At present, since the exemption request must come from the registered owner, this effectively limits the potential application of the Environmental Exemption Regulations to owned land. The Commission notes the definition of the term 'land holding' under the Act is: "an interest conferring the right to use, possession or occupation of land". This would appear to include leased land. For this reason, the Commission suggests government review the issue and provide direction to the Department of Agriculture and Forestry regarding the interpretation of subsection 35(1) of the Environmental Exemption Regulations as it applies to leased land.

DOUBLE-COUNTING

While the Commission believes double-counting undermines the credibility of the Act, it is important to understand why government decided to count land leased in and land leased out in calculating individual and corporate aggregate land holdings. Under subsection 1(3) of the *Lands Protection Act*, land leased out is deemed to be in the possession of both the lessor and the lessee.

If subsection 1(3) of the Act were to be repealed, this might allow an individual or a corporation to control an unlimited amount of land through creative leasing and accounting. For example, as pointed out by IRAC in a letter to the Commission, a corporation with an aggregate land holding of 3,000 acres could lease out those 3,000 acres, acquire 3,000 additional acres, and still be in full compliance with the Act.

As a further illustration, removing subsection 1(3) would allow an individual or a corporation to acquire 10,000 acres, provided the individual leased out 9,000 acres and the corporation leased out 7,000 acres in a given year. A large potato or blueberry processor,

or even a large forest products firm, would then be free to contract production from lessees through land leases.

IRAC has acknowledged that subsection 1(3) of the Act is of concern to the agricultural community, and envisions a process that would allow a landowner to lease in as much land as he or she leases out, with an established maximum. IRAC is of the view that monitoring would be of the utmost importance to insure the integrity of the Act is upheld.

Both the Federation of Agriculture and the Potato Board recommended that the double-counting provision be maintained, but with a slight modification. As the Commission understands their suggestion, an exemption would be allowed under subsection 1(3) of the Act, up to a certain percentage of the aggregate land holding limit, but only for short-term leases of less than three years duration. However, the positions adopted by the Federation and the Potato Board are conditional upon raising the aggregate land holding limits from 1,000 to 1,500 acres for individuals and from 3,000 acres to 4,500 acres for corporations with three equal shareholders.

In a general recommendation, the National Farmers Union asked that no further changes be made to the Act.

Although requested to do so by the Commission, IRAC was unable to provide an estimate of the impact, expressed as average acres for individuals and corporations, of removing the requirement to count land leased out.

At the public meetings, farmers and farm organizations were asked for their views on this question. Many responded by saying that since they don't lease out land, removing the double-counting provision would do them no good. Some, particularly potato producers

who are close to the aggregate land holding limit, said it would help.

The Commission recommends:

- 2. That the provincial government amend subsection 1(3) of the Lands Protection Act to remove the double-counting provision so that only land leased in is counted as part of the aggregate land holding; that the amendment include a sunset clause that would expire in six years, unless specifically extended before the expiration of the six-year time limit; and that a cap be instituted to limit the amount of land an individual or a corporation can lease out to 50% of arable acres owned.**

AGGREGATE LAND HOLDINGS

As indicated above, strong arguments were made by many potato producers, the Federation of Agriculture, the Potato Board, and Jasper Wyman & Son Canada Inc. to increase the limits for individuals and corporations, provided they meet provincial residency requirements. They requested new limits of 1,500 arable acres for individuals and 4,500 arable acres for corporations, a 50% increase over the current aggregate land holding limits. One or two presenters requested even higher limits.

The National Farmers Union and all non-farm groups that appeared before the Commission believe the limits should remain as they are.

The Commission believes there is consensus on at least one issue: there should be some limits on how much an individual or a corporation can own and

control. In other words, there is an ongoing need for the *Lands Protection Act*. The question remains: What should the limits be?

The argument for more arable land, as expressed by the potato industry, is based on the assumption that the profitability of individual operations can improve with size. This is because, in theory, the cost of producing a hundredweight of potatoes should decline as fixed costs are spread over more acres of production.

The Commission is aware that Island potato operations are less profitable than potato operations elsewhere. However, the main reasons identified by industry and government to explain this lower profitability are the higher cost of transportation and lower yields. Neither of these would be improved by access to more acreage.

The Commission heard that economies of scale dictate that Island potato producers must get bigger, the assumption being that bigger operations are more efficient and therefore more profitable. However, no empirical evidence – in the form of actual data from Prince Edward Island potato farms – was submitted to support this argument. The Commission did its own research into the question and was unable to confirm that there is a positive relationship between the acreage grown by individual Island potato producers and the profitability of their operations.

The Commission was not specifically asked to look into soil quality, or the relationship between crop rotation and soil quality. However, since so many observations were made during public meetings, the Commission decided to explore the question and, as a secondary issue, the significance and influence of the *Agricultural Crop Rotation Act*.

The Commission was briefed by staff of the Department of Agriculture and Forestry's Sustainable Agriculture Resource Section. A full and detailed description of the Revised Universal Soil Loss Equation can be accessed at http://www.gov.pe.ca/photos/original/af_fact_rusle.pdf. The preamble to the fact sheet reads as follows:

“In April 2002, the *Agricultural Crop Rotation Act* (ACRA) was adopted to protect water and soil quality on Prince Edward Island. The basic concepts of the Act are that regulated crops cannot be grown in a field more frequently than once in three years or grown on land with a slope of 9 per cent or greater unless the crop is under a management plan approved by the Prince Edward Island Department of Agriculture and Forestry. Regulated crops may be grown on high sloped land (9% or greater) if soil erosion is limited to a recognized tolerance of 3 tons/acre/year. The potential for erosion can be calculated using the Revised Universal Soil Loss Equation (RUSLE).”

The Department of Agriculture and Forestry publication goes on to say that soil erosion depletes soil quality, decreases soil productivity, and can affect surface water quality. The tolerable level of soil loss for Prince Edward Island is set at 3 tons per acre per year, the equivalent of approximately 3 cubic yards per acre per year.

According to the *Agricultural Crop Rotation Act*, if the RUSLE indicates potential soil loss greater than 3 tons per acre per year, a field must have alternate management practices applied to it to sustain long-term productivity. Otherwise, the cropping practice is in violation of the Act.

The Commission was advised by the Department of Agriculture and Forestry that 75% of potato production operations are in compliance with the Act but that little, if any, enforcement takes place. The estimate of compliance is based on monitoring carried out by the Department with the aid of satellite imagery. To state the obvious, 25% of potato production operations are not in compliance with the *Agricultural Crop Rotation Act*.

Another recognized measure of soil quality is organic matter. In its 1997 report, *Cultivating Island Solutions*, the Round Table on Resource Land Use and Stewardship recommended that government adopt soil organic matter as the primary measure of soil quality, and that a monitoring system be put in place to track the progress of this indicator. This was done.

The provincial government's 2010 *State of the Environment Report*, states the following:

“In 1999-2001, 68 per cent of samples had an organic matter content of three per cent or greater. In the 2006-2008 sampling period (on the same sites) this figure decreased to 48 per cent. Where potatoes were grown more frequently than once every three years in the crop rotation, soil organic matter levels dropped to below three per cent. When potatoes were grown once in every three years, and forages or cereals were incorporated into that rotation cycle, soil organic matter levels remained above three per cent. Soil organic matter levels are decreasing province-wide.”

This is not good news for the soil or for potato producers, and it does little to support the argument for increased acreage.

The Commission does not doubt, as they claim, that many potato producers are doing a good job when it comes to protecting against soil erosion and maintaining an acceptable level of soil organic matter content. However, the following facts cannot be ignored:

- 1. Potato yield is related to soil quality;**
- 2. A significant number of potato producers do not comply with the *Agricultural Crop Rotation Act*;**
- 3. The precise number of acres not in compliance is unknown since the Department of Agriculture and Forestry does not verify compliance through field checks;**
- 4. There have been no successful prosecutions since the *Agricultural Crop Rotation Act* was proclaimed in 2002; and**
- 5. Soil organic matter, a principle indicator of soil quality, continues to decline.**

On a more positive note, the Commission was advised that a recent change was made to the Crop Insurance Program. In future, in order to obtain insurance coverage, a farmer growing a crop regulated under the *Agricultural Crop Rotation Act* will have to declare and prove compliance with the Act. Otherwise, insurance coverage will not be guaranteed. The Commission sees this as a positive example of cross-compliance, demonstrating how the provincial government and the agriculture industry can work together to achieve better soil quality.

The Commission acknowledges arguments favouring an increase in the land limits based on the following:

1. That more land will lead to better rotations, and therefore better soil management practices;
2. That how the land is used is the most important question, not who owns it; and
3. That farmers who have the financial resources tend to look after the land better than those who don't; in other words, stewardship has nothing to do with size.

While these would appear to be sensible arguments, once again, the evidence shows that as farms have gotten bigger, soil

quality has generally declined. This is a most serious situation.

A related issue that generated some discussion during the public meetings was the impact of farm consolidation on the health and survival of rural communities. The Commission carefully reviewed the provincial government's *Rural Action Plan* and noted that agriculture and agri-food are seen as keys to rural development and maintaining a sense of community.

The Commission believes larger farm operations will tend to weaken or at least change rural communities. This question requires more thought, discussion and research. It extends clearly beyond the Commission's mandate, but it is an important question that needs to be addressed in the future.



The Commission recommends:

3. That the aggregate land holding limits of 1,000 acres of land for an individual and 3,000 acres of land for a corporation apply only to ‘arable land’ – a term to be defined in the revised Lands Protection Act – and that the maximum amount of non-arable land holdings be set at 400 acres for individuals and 1,200 acres for corporations.

The Commission recommends:

4. That before any future increase to the arable aggregate land holding limits is considered, government and the agriculture sector must commit to the following actions and report satisfactory progress to the public:
 - Through collaborative research, identify barriers to profitability and quantify the relationship, if any, between farm size and profitability;
 - Improve compliance with the *Agricultural Crop Rotation Act*, improve soil quality, and reduce losses from soil erosion; and
 - Evaluate and report on the potential impact on rural communities of further farm consolidation.

The Commission believes the *Agricultural Crop Rotation Act* has the potential to bring about significant improvements in soil quality, crop yields, and farm profitability.

But, as the hollow instrument that it is now, the *Agriculture Crop Rotation Act* lacks force and will never be effective until the agricultural community itself takes ownership of the problem and required solutions. To do nothing is not an option.

As a further comment on the subject of aggregate land holding limits, the Commission realizes there are some who believe the decision on “How much land is enough?” should be left to those who currently own and control the most land. History teaches us that the *Lands Protection Act* was brought in for the express purpose of providing all Islanders, through their elected representatives, with a say in the matter. In this regard, the Commission believes nothing has changed.

LAND GRABBING

The term ‘land grabbing’ refers to the contentious issue of large-scale land acquisitions, primarily the buying or leasing of large pieces of land in developing countries, by domestic and transnational companies, governments, and individuals. While used broadly throughout history, land grabbing as used today primarily refers to large-scale land acquisitions following the 2007-2008 world food price crisis.

By prompting food security fears within the developed world and newfound economic opportunities for agricultural investors, the food price crisis caused a dramatic spike in large-scale agricultural investments, primarily foreign, primarily in the Southern Hemisphere for the purposes of food and biofuels production. Initially hailed by investors and some developing countries as a new pathway towards agricultural development, investment in land has recently been criticized by citizens’ groups, governments, and multinational organizations who argue that it

has had negative impacts on local communities.

On Prince Edward Island, the chief concern has been the purchase and control of land by non-residents, primarily shore frontage. The Commission's research into the question and consultation with Islanders indicates that non-resident ownership is not as great a concern as it was when the *Lands Protection Act* came into force. The real estate industry provided valuable insight on this subject. Their experience shows that following the 2008 global financial crisis, demand for property here slowed considerably. Since then, the trend has been toward sales by non-residents rather than purchases.

However, in the Commission's view, this temporary trend does not mean Prince Edward Island will remain immune to market pressures in the longer term. As presently written, the *Lands Protection Act* offers no protection against purchase by any resident of a large land holding of just less than 1,000 acres. Such purchases by resident individuals can be achieved without IRAC and Executive Council approval.

Since the definition of 'resident' is a person who resides in the province for 183 days per year, non-consecutively, it is conceivable that offshore interests could acquire large tracts of land through the use of creative planning. For example, students attending university or college here for a couple of years could each buy up to 1,000 acres of land. Or someone could assist them with the purchase. In addition, the Act offers no protection against the purchase of farmland by individuals who have no intention of keeping it in agricultural production.

The Commission heard two messages loud and clear:

1. That the provincial government should take advantage of its legislative authority to keep land under the ownership and control of Islanders and those who want to become resident here; and
2. That agricultural land should remain in food production, preferably under the control of resident *bona fide* farmers.

The Commission recommends:

5. That the provincial government use data collected under the *Registry Act* to monitor the sale and purchase of large tracts of farmland by residents and non-residents who are not *bona fide* farmers, and place restrictions on future transactions, if deemed necessary; exceptions would be made in cases where non-residents receive land from residents via will or inheritance.

As it now stands, a non-resident can acquire up to 5 acres of land or 165 feet of shore frontage without Executive Council approval. Those who want more must apply to Executive Council, and approval is usually granted.

The Commission believes the provincial government must seek the views of Islanders on the question of whether non-residents should be permitted to acquire large tracts of land. The related question of whether residents who are not *bona fide* farmers and who have no intention of farming should be able to hold 1,000 acres needs to be debated as well. In other words, how much is enough, and how much is too much?

These are important questions that must be addressed, but further public discussion and debate are required

Land grabbing is a global phenomenon. It became an issue on Prince Edward Island in the 1960s when non-residents began buying shore frontage, and it remains a concern to this day. While the global economic downturn has slowed interest from non-residents, the Commission sees this as only a temporary reprieve.

The time will come again, perhaps soon, when Island land will again come under pressure from non-resident buyers. Government should have a policy in place to deal with the demand, and devise means to protect our precious shoreline and our most important natural resource the land from those whose interests may not be what's best for Prince Edward Island's land.





CONCLUDING THOUGHT

One letter received by the Commission bears repeating here:

“Increasingly soil is being viewed as a biological system and a key component that impacts our economy, water quality and landscape. However, it has been, and still is the economic return or lack of return from the marketplace for both agriculture and forestry products that has to cover the entire cost of land. Given that the protection of land, including landscape and water quality is of importance to society how should society assist the land owner to receive value which in the long-term covers the cost of protecting the landscape and the water?”

Perhaps it is time for the province as a whole to explore all the tools available that would contribute to the purposes of the *Lands Protection Act* including property rights, land taxation, tax credits, land mapping, management plans, land banking and regulations.”

We could not have expressed it better!

If anything, the ideas presented at the fifteen public meetings and the many written submissions received indicate Islanders have an increased awareness that the land, the soil, the water, and the air are all part of an interconnected ecosystem that must be protected and preserved for generations to come.

RED TAPE

BACKGROUND

The OVERVIEW chapter of this report describes the administration and enforcement roles delegated by Executive Council to IRAC under Section 8 and subsections 17.1 and 17.2 of the *Lands Protection Act*. All applications under the Act go to IRAC first, together with a processing fee. Because of the paperwork required and the complexity involved in most transactions, many applicants must rely on professional help to get through the legal and regulatory maze. The Commission heard that some landowners ignore the Act entirely, choosing instead to conduct their affairs outside the law.

Few people who offered opinions to the Commission were complimentary of the process or the service they receive from IRAC. Some believe in the importance of IRAC's role in controlling land ownership and see the administrative burden as a necessary one. Some also see the Land Identification Program as a good thing because it constitutes the only form of land use control on the 90% of the Island having no official land use plan. But most view the burden as expensive, intrusive and unnecessary.

Landowners who have seen the rules change over time believe the additional red tape is simply a sign that time has caught up with the Act. They cite changes in agricultural policy, trade rules and market conditions over the thirty years since the Act came into force. For example, supply management was supposed to enable a farm family to make a living from a thirty-cow herd. It doesn't anymore. The potato industry was diversified in 1982, and producers had more choices back then when it came time to sell their produce. They don't anymore, at least not to the same degree.

Where Does IRAC Get its Power?

Subsections 8.(1), 8.(2) and 8.(3) of the *Lands Protection Act* define the role of IRAC, and how it relates to that of Executive Council. It is important to understand that the decision to grant IRAC these powers was made by the Legislative Assembly, and the role of IRAC can be changed whenever and for whatever reason government sees fit.

8. (1) The Commission shall
 - a) review all applications under sections 4, 5, and 5.3;
 - b) obtain information pertinent to the application;
 - c) recommend to the Lieutenant Governor in Council on the disposition of the application; and
 - d) recommend to the Lieutenant Governor in Council on a divestiture schedule for each applicant pursuant to section 6.1.
- (2) Recommendations made by the Commission under subsection (1) shall be based on the following considerations:
 - a) an assessment of the best use of the land based on the guidelines and policies established by the Lieutenant Governor in Council under clause 7(a) of the *Planning Act*;
 - b) the most effective manner of ensuring the best land use; and
 - c) such other matters in relation to the economic and cultural needs of the people of the province as may be specified in policies adopted under section 8.1.

- (3) The Lieutenant Governor in Council, in determining whether or not to grant a permit under section 4 or 5, shall consider the recommendations of the Commission.

Subsections 17.1 and 17.2 give IRAC additional authority to make its own regulations for application forms and processing fees, and to administer the Land Identification Program.

17.1 The Commission may make regulations

- a) prescribing the procedure in respect of applications for permits; and
- b) prescribing a processing fee in respect of an application for a permit.

17.2 The Commission may, with the approval of the Lieutenant Governor in Council, administer regulations made under clause 17(1)(d) [the Land Identification Program].

THE LAND IDENTIFICATION PROGRAM

The stated purpose of the Land Identification Program is to prevent the development of land identified by Executive Council for non-development use. ‘Non-development use’ means use for purposes that do not involve commercial or industrial development or subdivision, such as forestry, wildlife, agriculture, recreation, permanent residences, and seasonal residences. The Land Identification Regulations apply in the following four cases:

- The person wishing to acquire the land is a non-resident;
- An individual transfers his or her land to a corporation;
- A corporation wishes to acquire land; and

- Government or one of its agencies sells land and decides it should be identified.

There are exceptions:

- The land is within a municipality that has an official plan approved by the Minister;
- The land is outside an official plan municipality, is less than 5 acres in area, and has less than 165 feet of shore frontage; and
- The land is outside an official plan municipality, and approval has already been granted for development of the entire parcel of land.

Executive Council approval is usually subject to a Land Identification Agreement (LIA). The covenants contained in the LIA are binding on the purchaser and on his or her successors. The LIA has no time limit; it is renewed automatically unless the purchaser applies for it to be terminated. Application cannot be made until one year after the LIA is issued, and termination cannot be granted by government until ten years after the application is received from the purchaser. In other words, the minimum term of an LIA is eleven years.

According to information received by the Commission from IRAC, as of December 31, 2012, the maximum possible area under LIA was 299,750 acres, or approximately 21% of the total land area of the Island. This is more than double the area contained within official plan municipalities. In the absence of a provincial land use plan, IRAC considers that the LIA can be a substitute, by restricting development, at least for a time.

IRAC does not notify those affected by a LIA of the procedure for de-identification, but responds to requests for termination when they are made. In the course of public meetings, the Commission asked people whether they were aware of the process for terminating a LIA; only a few were.

According to information provided by IRAC, between 2008 and 2012, inclusively, 123 parcels representing 5,427 acres were de-identified. This represents a mere 1.8% of the total area under LIA. IRAC does not consider that it has a responsibility to explain the conditions included in a LIA. It regards this as the responsibility of the purchaser and, if applicable, the purchaser's legal advisor.

It is not clear to the Commission whether Executive Council intended to grant IRAC the express authority to exercise a land use planning role under the *Lands Protection Act* by applying the Land Identification Program the way it does. If this was government's intention, then the Commission is of the view that the *Lands Protection Act* is not the correct statute to use for land use planning and development control; the *Planning Act* is.

Until the provincial government decides how it will address the issue of province-wide land use planning, the Commission believes all LIAs should lapse

automatically and retroactively, ten years after they were entered into, and not require an application to terminate by the purchaser or by a corporation receiving the transferred land.

The Commission recommends:

- 6. That the provincial government amend Section 8 of the Land Identification Regulations so that, in future, all new Land Identification Agreements will expire automatically ten years from the date they were issued, and so that all existing Land Identification Agreements will expire, automatically and retroactively, ten years from the original date they were issued. To make it clear, the purchaser or the corporation receiving the transferred land will not have to apply for de-identification.**



The Commission was made aware of instances where subdivision development permits were issued erroneously by the provincial government on land subject to a LIA. These violations occur when Department of Environment, Safety and Justice staff unknowingly approve parcels for subdivision that have conditions prohibiting development of this nature. There is clearly a communication problem between the government agency responsible for enforcing the LIA and the department responsible for subdivision approval.

The Commission sees no reason to amend Section 10 of the Land Identification Regulations, and believes IRAC should maintain its role in processing most applications for amendments to LIAs. However, in cases where one government agency has overstepped its authority inadvertently by issuing a building permit or a subdivision development permit, or both, the landowner should not have to suffer the consequences of government's mistake.

The Commission recommends:

7. That, if a building permit or a subdivision permit, or both, have been issued on land subject to a Land Identification Agreement, and when it is determined later that this occurred, then that portion of the parcel for which the building or subdivision permit as been granted is to be de-identified immediately.

Lands conveyed by Enterprise PEI or the Prince Edward Island Lending Agency, where these lands have been repossessed through a mortgage or default sale, are subject to a LIA. In other words, the purchaser is automatically bound by the

conditions of a LIA, whether or not the land in question was identified before it was repossessed. The Commission does not believe this practice meets the tests of fairness and common sense.

The Commission recommends:

8. Where land is conveyed to a purchaser by Enterprise PEI or acquired by a purchaser from the PEI Lending Agency, where land has been repossessed through a mortgage or default sale, the land should not be subject to a Land Identification Agreement unless one was in effect at the time the land was repossessed through the mortgage or default sale.

APPLICATION FEES

Information obtained from IRAC indicates that the estimated annual cost of administering the *Lands Protection Act* is \$500,000. This includes direct costs, plus an allocated amount for three full-time Commissioners and a Director. The current complement of staff devoted exclusively to the administration and enforcement of the Act consists of two full-time, one half-time, and one forty percent position.

IRAC reports that revenue from application fees can fluctuate greatly from one fiscal year to another. In 2009-2010, IRAC collected \$112,000 in application fees; in 2010-2011, it collected \$217,000; and in 2011-2012, it collected \$330,000. In addition to application fees, IRAC began assessing penalties for non-compliance in 2010. In 2010-2011, it collected \$6,000 in penalties and, in 2011-2012, it collected \$15,000.

IRAC bills the provincial government for the difference between combined revenue from fees and penalties, and expenditures related to the administration and enforcement of the Act. The Commission notes that all fees collected from applicants remain with IRAC and are not shared with the Province, although support staff with the Department of Finance and Municipal Affairs and the Executive Council Office devote a significant amount of time to preparing and processing documentation forwarded to Executive Council.

As noted earlier, the fee charged by IRAC to process an application under the *Lands Protection Act* is \$500 for properties valued under \$50,000, and 1% for properties valued over \$50,000. Later in this report, we will introduce the concept of the 'Island Viewscape Trust'. The Commission believes one way to provide a source of funds for the Trust would be to transfer one-half of the application fees collected by IRAC.

The Commission recommends:

9. That the Island Regulatory and Appeals Commission transfer one-half (1/2) of the fees it collects from applications made under the Lands Protection Act to the Island Viewscape Trust.

The Commission believes more should be done to encourage non-residents to move here and to encourage expatriate Islanders born here to return home. In this regard, those non-residents who have paid a fee to IRAC for an application made under the *Lands Protection Act* should be reimbursed the entire fee if they move here within a specified time, perhaps two (2) years after approval has been granted.



The Commission recommends:

10. That any non-resident, or expatriate Islander returning to Prince Edward Island, who establishes permanent residency here within two years of acquiring a land holding should be reimbursed the entire application fee paid to the Island Regulatory and Appeals Commission.

On a related matter, the P.E.I. Real Estate Association expressed the opinion that more must be done to encourage non-residents to make Prince Edward Island their permanent place of residence. The Association believes the current process sends a negative message. To make matters worse, if a non-resident applicant is denied permission to acquire land, that person must apply to IRAC within six (6) months of the denial to have a portion of the hefty application fee reimbursed. The Commission does not see this as fair treatment.

The Commission recommends:

11. That, if a non-resident is denied permission by Executive Council to acquire a land holding, 100% of the application fee should be reimbursed to the applicant.

MANDATORY REPORTING REQUIREMENTS

The Commission will not go into great detail regarding mandatory reporting requirements outlined in the *Lands Protection Act*. Suffice it to say that they are quite onerous for an individual or corporation that leases land or that is within 25% of the aggregate land

holding limit. Input received from landowners indicates that most must assign staff annually to complete this task or have it done by someone else, in either case, at considerable cost.

The Commission believes a simpler way must be found, one based on trust and that respects the fact that the farmer's primary interest and talent is the production of food, not paperwork. This being said, the Commission agrees with the views expressed by many that the provincial government must maintain an accurate data base of who owns and controls the land.

Any Canadian who pays income tax must complete and submit a report to the Canada Revenue Agency each year to be in compliance with the federal *Income Tax Act*. Individuals who file electronically need not even submit T slips or receipts to back up their claims. In fact, the Agency is encouraging all Canadians to file electronically. It's an honours system, and everyone knows they can be audited by the Canada Revenue Agency any time it decides to do so, and with little warning. Why wouldn't this work for the *Lands Protection Act*?

The Commission recommends:

12. That the provincial government modify the mandatory reporting requirements under the *Lands Protection Act* so that landowners within 25% of the aggregate land holding limits be required only to certify, annually and in writing, the acreage of land owned, the acreage leased in, and the acreage leased out, and that it be made clear that all landowners are subject to random audits by the Island Regulatory and Appeals Commission.

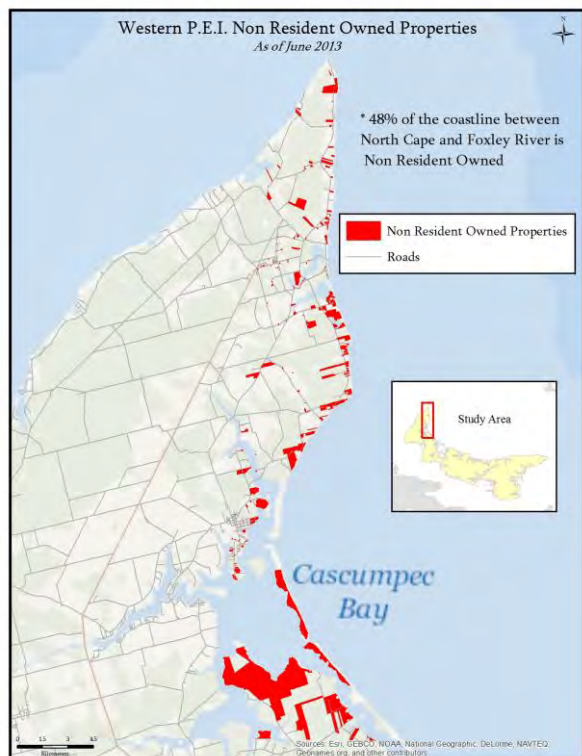
MONITORING LAND OWNERSHIP TRENDS

No non-resident land ownership report has been produced by government since 2004. By way of explanation, IRAC has stated that it decided to postpone the preparation of an update until the large discrepancy between provincial assessment data and the number of non-resident applications approved by Executive Council was rectified. IRAC's intent is to have the discrepancy quantified, and a report prepared before March 31, 2014. The Commission considers that a ten-year interval between non-resident land ownership reports is neither appropriate nor acceptable in this province.

The Commission believes the monitoring of non-resident land ownership trends is essential to administering the *Lands Protection Act*. According to anecdotal information provided by a member of the P.E.I. Real Estate Association, demand for land by non-residents has slowed since the 2008 recession. However, as stated elsewhere in this report, the Commission believes the slowdown is temporary.

As to the approach to be taken, the Commission claims no expertise in monitoring non-resident land ownership trends. However, common sense would suggest that provincial property tax records could be used to count acreage owned by non-residents, those who do not receive the provincial resident rebate.





The Commission recommends:

13. That the Island Regulatory and Appeals Commission present an annual report of non-resident land ownership to Executive Council, and that this information, including maps, be made available to the public through the Island Regulatory and Appeals Commission website.

FREQUENCY OF IRAC MEETINGS

A number of submissions made to the Commission highlighted the need for IRAC Commissioners to meet more frequently to review applications under the *Lands Protection Act* and Regulations. The Commission agrees that bi-weekly meetings are not enough. This would mean that

Executive Council would also consider *Lands Protection Act* applications on a weekly basis, which should not present a problem given the importance of land matters on Prince Edward Island.

The Commission recommends:

14. That the Island Regulatory and Appeals Commission meet weekly to review applications made under the *Lands Protection Act* and Regulations, so as to ensure that all applications are processed in a timely manner.

DEFINING ‘SHORE FRONTAGE’

The term ‘shore frontage’ is not defined in the Act or the Regulations although it is of great significance to the application of the *Lands Protection Act*. In processing applications under Sections 4 and 5 of the Act, IRAC has chosen to apply the definition of ‘watercourse boundary’ found in the Watercourse and Wetland Protection Regulations made under the *Environmental Protection Act* in regard to the term ‘shore frontage’.

The Watercourse and Wetland Protection Regulations made under the *Environmental Protection Act* define the term ‘watercourse’ as follows:

“an area which has a sediment bed and may or may not contain water, and without limiting the generality of the foregoing, includes the full length and width of the sediment bed, bank and shore of any stream, spring, creek, brook, river, lake, pond, bay, estuary or coastal body, any water therein, and any part thereof, up to and including the watercourse boundary.”



The Commission suggested to IRAC that an alternative definition of shore frontage might be the term ‘coastal area’ found in the Subdivision and Development Regulations made under the *Planning Act*. In its response, IRAC made it clear that it has significant concerns. IRAC claims it received direction from the provincial government in 2009 to continue its practice of considering what constitutes shore frontage on a case-by-case basis. IRAC considers the definition of ‘watercourse boundary’ contained in the Watercourse and Wetland Protection Regulations made under the *Environmental Protection Act* to be a reasonable definition.

The definition of ‘coastal area’ limits shore frontage to that “within 500 metres inland and seaward of the mean high water mark of coastal and tidal waters”. As the Commission understands it, shore frontage under the ‘coastal area’ definition would include all land along the coast of the Island, all land along the shores of a salt water bay

or estuary, and all land along that part of a river or stream that has tidal water.

There is an obvious and a significant difference between ‘coastal area’ and ‘watercourse boundary’. In practical terms, it means that many more applications for land which includes shore frontage must be processed under the definition adopted by IRAC.

This raises a number of questions:

1. What was the original intent of the legislation?
2. Does Executive Council need to approve land purchases which include frontage along every watercourse in the province, including those that contain no water during the drier months of the year?
3. Should ‘shore frontage’ apply only to coastal waters and rivers with tidal waters and, perhaps, the larger ponds?

The Commission believes this issue needs to be reviewed by Executive Council.

The Commission recommends:

15. That Executive Council review the Island Regulatory and Appeal Commission's interpretation of the term 'shore frontage' and provide clear direction regarding whether it should mean a term already defined in law, such as 'watercourse boundary' or 'coastal area', or whether it should mean something else entirely.

REMOVING THE 1998 'GRAND-FATHERING' PROVISION

IRAC has suggested, and the Commission agrees, that subsections 6.1 and 6.2 of the *Lands Protection Act* are redundant. These subsections were enacted in 1998 when government did away with special permits enabling individuals and corporations to hold acreage in excess of the aggregate land holding limits. In order to make the transition easier, it gave landowners up to nine years to eliminate their excess holdings. The nine-year period has since expired.

The Commission recommends:

16. That government repeal subsections 6.1 and 6.2 of the *Lands Protection Act*, since the 1998 'grand-fathering' provision which allowed landowners to eliminate excess holdings is no longer required.

ROLE OF EXECUTIVE COUNCIL

From time to time, it has been suggested by some that Executive Council ought to transfer many, if not all, of its final decision-making authority in respect to land matters and the *Lands Protection Act* to IRAC.

The Commission is strongly opposed to any move in this direction. In our free and democratic society, it is not only appropriate but wise that Executive Council have the final say over all matters related to the administration of the Act.

CONCLUDING THOUGHT

As a concluding thought on the issue of red tape, the critical questions are these:

1. How can we reduce the cost to government and the burden to the private sector without weakening the intent and effectiveness of the *Lands Protection Act*?
2. How can we reduce confrontation between landowners, particularly farmers, and the responsible government agencies?

Farming has always been a challenging occupation and a difficult way to make a living. Farmers are stewards of the land, first and foremost, and they want to do things right. There was a time when farmers looked forward to visits from farm management specialists who shared their knowledge in a spirit of collaboration, always with a view to making things work better, to promote the adoption of better practices, to make farms more profitable, and to make farmers' lives easier.

That, sadly, is no longer the case. The Commission heard loud and clear that farmers are sick and tired of having some public servants from government departments come on their land for no other reason than to enforce regulations.

The relationship between farmers and IRAC is, if anything, worse yet. The trust is gone. This has to change, and better relationships must be established.



UTILITIES, MULTIPLE OWNERS AND NON-PROFIT CORPORATIONS

LAND HOLDING LIMITS FOR UTILITIES

The Commission was asked to examine legislative concerns that have arisen involving land holding limits as they apply to utilities. Under the current definition of 'land holding', an easement is to be counted as part of a person's or a corporation's acreage. IRAC was asked to provide information regarding the current aggregate land holdings of the major electric and telecommunications companies operating in the province. A review of this information shows that none of these companies is within 75% of the aggregate land holding limit.

The Commission consulted those in attendance at public meetings regarding what should be done if one or more of the major utilities were to apply to exceed the aggregate land holding limits. The response given was that, if Executive Council deemed the application to be in the public interest, then the application should be approved. The Commission notes that municipal utilities are exempted entirely from the Act.

The Commission sees no reason why it should be necessary to count easements as part of the aggregate land holdings of companies such as Maritime Electric, Bell Aliant and Eastlink. However, the issue of utilities that require easements to transfer electricity produced by windmills and other alternative electricity sources, except those wholly owned by a municipality, will not be addressed by the Commission. This is an issue best left to Executive Council and to be determined on a case-by-case basis.

It makes no sense for IRAC to count easements of access to another parcel of land or a public road as part of an individual's or a corporation's aggregate land holding. The access easement is held in common with others and should not be deemed as being the exclusive possession of only one.

For clarity, an agreement which gives a party the right to use the land for farming, wood harvesting or another type of business operation is not an easement. Therefore, such an agreement should not be considered an easement of access.

Likewise, common open areas shown on an approved subdivision plan ought not to be deemed to be part of an individual's or a corporation's aggregate land holding, since the right to use and enjoy the open areas applies equally to all who live within the subdivision.

The Commission recommends:

17. That the present requirement for utilities to count easements as part of aggregate land holdings be removed from the *Lands Protection Act*, except for those utilities that produce electricity from alternative energy sources; rights-of-way and easements should not be counted as part of any land holding if they are truly that, and not rights-of-way and easements that take in whole properties.

MULTIPLE FAMILY OWNERS, TRANSFERS AND INHERITANCES

Section 1 of the Exemption Regulations made under the *Lands Protection Act* reads:

Persons who acquire a land holding by gift, devise or inheritance from a spouse, sibling or direct descendant or ancestor are exempt from the application of section 4 of the Act.

This means, in practical terms, that a non-resident does not require Executive Council permission to acquire more than 5 acres of land or 165 feet of shore frontage, if that person acquires the land as a gift or inheritance from a close family member as defined above.

IRAC expressed the concern that the Exemption Regulations do not adequately cover instances where a non-resident person **buys** land from a close family member, nor do they include exchange of land between family members who fall outside the strict **ancestor/descendant** and **sibling** lines. IRAC believes it should be necessary to apply to Executive Council, or to at least advertise such transactions, where the intent is to keep ownership within the same family.

The Commission understands IRAC's concern but is of the view that the Act and the Exemption Regulations, in their present form, make it more difficult than it needs to be to transfer land between family members. The Commission doubts the intent of the Act is to limit transfers solely to gifts, without any financial consideration, or to frustrate the testamentary wishes of a deceased person, provided the beneficiary is not placed in violation of the Act as a result.

The Commission recommends:

18. That Section 1 of the Exemption Regulations be amended to remove the requirement to apply to Executive Council for a transfer of land between close family members (as defined in Section 1), even if it involves financial consideration, and to remove the requirement to apply to Executive Council for a transfer of land as the result of an inheritance, even if the recipient is not a close family member, providing, in either case, the recipient is not placed in violation of the *Lands Protection Act*.

The current exemption respecting conveyances among parents, siblings, spouses and children does not contain any residency restriction on either the grantor or the grantee. There is a good policy argument for making an initial transfer among family members exempt from the application of the Act. There are also good policy arguments for stipulating some residency requirements in order for any subsequent family transfer to be similarly exempt.

For example, if a parent wishes to convey title to a large parcel of land to three non-resident children, the Commission believes that transaction should be exempt. If, however, two of the children then wish to convey their interest to the third child, that transfer should be subject to the Act, unless the two children conveying their interests meet some residency requirement.

A minimum of two years residency would be appropriate, in the Commission's view. As well, transfers between spouses should be exempt in all circumstances.

The Commission recommends:

19. That, in order to ensure the spirit of the *Lands Protection Act* is respected, the Act should be amended to introduce residency requirements for transfers involving family members, except in the case of spousal transfers. Otherwise, the majority of multiple grantees listed on the initial deed could transfer their interests to non-resident grantees, thereby avoiding application of the Act.

INFORMATION AND DEEMING REQUIREMENTS FOR NON-PROFIT CORPORATIONS

The *Lands Protection Act* defines “corporation” as including:

“A partnership, cooperative or body corporate, whether formed or incorporated under the law of [Prince Edward Island] or any other province or of Canada or outside of Canada, and for the purpose of this Act a corporation and other corporations directly or indirectly controlled by the same person, group or organization shall be deemed to be one corporation.”

The definition does not exclude Part II corporations as defined under the *Companies Act*. For this reason, Part II corporations that are “directly or indirectly controlled by the same person, group or organization” are deemed by the Act to be one corporation. (Part II corporations are not-for-profit entities; they have no individual shares.) Nothing in the Act defines the phrase “directly or indirectly controlled”.

The Commission understands that IRAC has, as a matter of administrative policy, applied a “percentage of voting shares” test in determining control. If the same person controls more than fifty percent of the voting shares of two corporations, they are deemed under the Act to be a single corporation.

In addition to voting control, *de facto* control can be exercised financially. For example, if two corporations are financially dependent upon the same person, it could be argued that that person controls both corporations, even if the person does not own any voting shares in either corporation. The Commission is not aware, however, of IRAC ever having utilized a “financial control” test in determining if two corporations should be deemed to be one corporation.

Part II corporations, by their nature, have no share capital and, therefore, no voting shares. All Part II corporations must have at least one category of members who have the right to elect directors of the corporation. In that sense, they are analogous to voting shareholders of Part I corporations. Most Part II companies have a “one member – one vote” approach, although it is theoretically possible to have a class of members having multiple votes at members’ meetings. As a rule, however, it is highly unlikely that one person would have voting control of a Part II corporation.

The practical problem which arises with Part II corporations is that the by-laws of the corporation may be worded broadly such that there are a great many potential members. A typical example would be a provision which permits anyone who “supports the objects and the purposes of the corporation” to become a member. Therefore, it can be difficult to determine precisely who the members of a Part II corporation are at any given time.

Given that there is rarely ever one person who controls two or more Part II

corporations, the ability to deem two or more Part II corporations to be one corporation would turn on whether or not the same “group or organization” controls the corporations.

There are some obvious circumstances where the deeming provision could come into effect. If, for example, the by-laws of one Part II corporation require the directors of that corporation to be approved by the directors of a second Part II corporation, the first Part II corporation is clearly controlled by the second. Therefore, the two corporations should be deemed to be one corporation.

Similarly, if the by-laws of one Part II corporation stipulate that those directors must also be the directors of a second Part II corporation, the two corporations are clearly controlled by the same group or organization. These two should be deemed to be one corporation.

The problem arises with corporations that are less overt in their by-laws in revealing their connection.

It would be very difficult to stipulate, by regulation or otherwise, the basis upon which a “group or organization” could be identified. There are so many possible combinations and permutations that any effort at legislating the parameters for determining a “group or an organization” would soon become a manual for lawyers to determine how to get around the definition. For this reason, the Commission believes the matter would have to be addressed by way of an administrative policy, based on available information.

The Commission believes the current forms used by corporations to apply for permission to hold land are not suitable for Part II corporations. While disclosure of directors should be required, listing members of the Part II corporation is not practically feasible, for the reasons outlined above.

However, to address the issue of control, the Commission believes the by-laws should be submitted with the Part II corporation’s application. A review of the by-laws would assist IRAC in determining if there were any organizational restrictions which would place voting control of the applicant under another corporation, or cause it to be associated with another Part II corporation.

Recognizing that efforts could be made to create a control mechanism outside of the by-laws, the application should also require a statutory declaration from the president of the applicant corporation. The declaration would certify that there are no agreements or restrictions in place respecting the election of directors of the applicant corporation.

In addition, the Commission believes an application from a Part II corporation should require disclosure of the source of the proceeds to be utilized by the applicant corporation to complete the transaction. If the source of funds is a “group or organization” which has made funds available for another Part II corporation to acquire land on Prince Edward Island, IRAC would deem the two corporations to be one corporation, due to the financial control being exercised by the group or organization providing the purchase funds.

The Commission recommends:

20. That a separate and distinct application be developed for corporations listed under Part II of the *Companies Act*, based on the issues and suggestions identified in this section of the report, and that the Island Regulatory and Appeals Commission report on progress to Executive Council after the new application process has been in place for one year.

OTHER ISSUES

LAND BANKING

In 1969, the provincial government passed *An Act to Establish the Prince Edward Island Land Development Corporation*, and set up the Land Development Corporation (LDC) as a Crown corporation financed solely by public funds. The mandate of the LDC was defined as follows:

1. **To assist the agriculture industry;**
2. **To acquire, develop and improve land;**
3. **To make land available to farmers;**
4. **To enable consolidation of farm lands;**
5. **To provide credit to farmers for land consolidation; and**
6. **Generally to advance the interests of farmers in an economic and efficient manner in the Province.**

Later, the following clause was added to LDC's mandate:

7. **To acquire, develop or improve land for such purposes including agriculture, forestry, wildlife, fishing, industry, and tourism and generally to advance the interests of the people of the province in the economic and efficient use of the land comprising the province, and without limiting the generality thereof:**
 - i. **to preserve, develop and hold agricultural land for agricultural and farm uses;**
 - ii. **to preserve, develop and hold green belt land in and around urban areas, streams, ponds and fragile habitats, and**

- iii. **to preserve, develop and hold lands having desirable qualities for urban, industrial, recreational, forestry and wildlife capabilities.**

In its early years, the LDC bought property from farmers who wanted to get out of agriculture using money cost-shared between the provincial and federal governments. In addition to facilitating the retirement and exit of many small and unprofitable farm operations, the LDC held the acquired properties and transferred them via lease or purchase to new and established farmers who needed more land.

The Commission heard from a number of farmers that the LDC was a valuable source of land at a time when their family farm operations were modernizing and expanding to become the more efficient operations they are today. The opportunity to enter into lease-to-purchase arrangements was cited as a key advantage of dealing with the LDC.

On the downside, particularly in the early days of the LDC, no restrictions were put on how the land could be used. As a result, farmland was sometimes 'mined' and left in a depleted condition. The lack of follow-up to monitor land stewardship was a major weakness of the LDC model.

The LDC was eventually wound down and the land it owned was sold to farmers and others interested in acquiring land for forest production. The Act, renamed the *Land Development Corporation Act*, was repealed in 1990. While government no doubt had good reasons for getting out of the land business, the Commission believes the time has come to take a second look at the mandate of the former LDC.

It now seems that the original mandated objectives are as relevant today as they were almost fifty years ago, and perhaps even more so.

THE ISLAND FARMLAND TRUST

A quick look at Island real estate websites shows that farmland is offered for sale for between \$1,000 and \$2,500 an acre, depending on the size and location of the parcel, with good potato land going for as high as \$3,500 an acre.

In today's fiscal climate, some might question the provincial government's financial capacity to establish a land banking system using solely public funds. However, the call to set up a government-administered agency, similar to the former Land Development Corporation came from all farm organizations and from non-farm groups as well. If the provincial government decides it cannot do it alone through a structure like the LDC, then perhaps it can use its legislative powers to set up the 'Island Farmland Trust'.

As envisioned by this Commission, the Island Farmland Trust would provide a vehicle whereby Islanders and other investors could buy land from retiring farmers and those wishing to get out of the business for other reasons.

The key advantages of an Island Farmland Trust would be the following:

1. The Trust would provide a way for retiring farmers, and those wishing to exit the industry for business reasons, to sell their land at a fair price;
2. The Trust would provide a source of land to new entrants and expanding farm operators on favourable financial terms, without a huge capital outlay; and

3. The Trust might provide a way for the provincial government to raise money from private investors while minimizing the risk to Island taxpayers.

The Commission had neither the time nor the expertise to fully research the potential application of a privately-financed version of the Island Farmland Trust, although a meeting was held with the Department of Innovation and Advanced Learning to review recent developments on the subject of land banking.

Prince Edward Island has its own securities legislation, the *Securities Act*, (http://www.gov.pe.ca/law/statutes/pdf/s-03_1.pdf), but it is not known if this Act would lend itself to the establishment of such a privately-funded Trust if the provincial government were to decide to go in this direction.

The message from the public, expressed clearly to the Commission, is that some way must be found – and soon – to keep farmland in food production and to allow Island farmers to acquire the land they need to grow food. Too much land is being taken out of production and away from the control of Island farmers. As stated clearly by both the Federation of Agriculture and the National Farmers Union, a new land banking system is a priority for the agricultural sector.

Many who expressed views on this subject were quick to point out that provincial governments do not have a stellar record when it comes to public investment in private business. These same people believe Islanders would welcome a concrete response from the provincial government in the form of a successor to the Land Development Corporation, in whatever form it might take.

The Commission recommends:

21. That the provincial government establish the Island Farmland Trust as a Crown corporation, using public funds, for the purpose of buying farmland and leasing or selling it to resident *bona fide* farmers, and that a feasibility study be conducted to determine if the Trust could be supplemented by some level of private funding.

As a final thought, Prof. Tim Carroll of the University of Prince Edward Island's School of Business has proposed an alternative to the traditional model of government agency based on a more modern version of the former LDC. It is based on the premise that protecting the land for farming by a new generation of Island farmers will require the provincial government to exercise its full jurisdictional control over securities legislation and taxation to augment what Prof. Carroll calls "The psychological effect of the *Lands Protection Act*." The model would require no investment of public funds for the purchase of land, only for the administration of the Island Farmland Trust itself.

Prof. Carroll's proposal is outlined briefly in Appendix III. The Commission wishes to make it clear that it is not recommending this model. However, it does represent a worthwhile Island-based effort to identify new approaches to dealing with an important challenge. In this regard, the proposal should be given careful consideration.

PRESERVING ISLAND VIEWSCAPES

The need to preserve unique and cherished Island views is not a new challenge.

Efforts to do so go back as far as the mid-1940s. When Lt. Col. E.W. Johnstone returned from military service in World War II, he established the Prince Edward Island Rural Beautification Society with the primary purpose of protecting, preserving and enhancing the province's rural landscape. A secondary purpose was to create an environment that would make rural Prince Edward Island a more attractive place for young people to live.

Since the Society was formed, thousands of Islanders have participated in the neighbour-friendly competitions by improving their properties: farms, farm buildings, homesteads, small dwellings, and community halls and cemeteries. Planting trees and flower gardens, and preserving natural areas, are important components of the overall program. While the efforts of the Rural Beautification Society and its many participants, as well as similar organizations like the L.M. Montgomery Land Trust and the Island Nature Trust, are to be commended, more is needed to protect unique Island landscape vistas before they disappear.

As stated earlier in this report, tourists value our pastoral landscapes more than any other single feature. The Tourism Industry Association of Prince Edward Island highlighted this fact in its submission to the Commission, as did the L.M. Montgomery Land Trust.

The issue of landscape protection was raised by the 1973 and 1990 Royal Commissions on the Land and in the 1997 report of the Round Table on Resource Land Use and Stewardship.

New Foundations, the December 2009 report of the Commission on Land and Local Governance <http://www.gov.pe.ca/photos/original/ReportEng.pdf> includes a section on preserving Island views and contains the following recommendations:

1. That the provincial government offer financial and technical assistance to municipalities and unincorporated communities to help them identify significant landscape features and to develop their own plans to protect scenic viewsapes, including recommendations leading to possible statutory designation; and
2. That a landscape plan, paid for by the developer, be added to the list of conditions attached to a subdivision application, both in municipalities having an official plan and in areas of the province covered by the Subdivision and Development Regulations.

Despite the best efforts of the authors of these reports, little has been done to preserve scenic viewsapes. As pointed out in *New Foundations*, the only exceptions are the Special Planning Area Regulations which apply to the Princetown Point-Stanley Bridge and the Borden-Carleton approach to the Confederation Bridge. As a result, the following scenic viewsapes are protected by law:

1. The area around Campbell's Pond in Park Corner;
2. The area adjacent to Highway 20 which slopes down to the French River and overlooks the wharf;
3. The view of Amherst Cove from the Trans-Canada Highway in Borden-Carleton; and
4. The section of waterfront to the west of the Confederation Bridge.

Perhaps the most successful example of preserving a unique Island viewscape is the excellent work of the L.M. Montgomery Land Trust. In March 2007, the Trust released a plan to preserve five kilometres of shoreline

and 400 acres of coastal land located between French River and Park Corner, centered on the Cape Tryon lighthouse.

The Commission also reviewed an excellent paper by Carol Horne, entitled *The Island Landscape – a Non-renewable Resource*. Her research into the topic included developing a measurement tool that can be used to identify and rank viewsapes http://www.gov.pe.ca/photos/original/clg_iisa_09.pdf.

Earlier in this report, the Commission recommended that one-half (1/2) of the fees collected by IRAC from individuals and corporations applying under the *Lands Protection Act* be set aside in a fund, to be known as the 'Island Viewscape Trust', to buy property development rights or whole properties, in order to protect scenic viewsapes. This is exactly what the L.M. Montgomery Land Trust is doing with money it raises through private donations.

Another source of funds might be the Land Transfer Tax introduced a few years ago for lands with a value greater than \$30,000, either by purchase price or assessment, whichever is greater. Not one dollar of the Land Transfer Tax goes towards anything to do with land; it is simply absorbed in general government revenue. The Commission suggests government seriously consider transferring 5% of the revenue it collects from the Land Transfer Tax to the Island Viewscape Trust.

The Commission believes the Island Viewscape Trust should be modeled after the L.M. Montgomery Land Trust. In practical terms, the provincial government would name an advisory body, called the Island Viewscape Trust, to provide recommendations on the selection and purchase of development rights and candidate properties. Members of the Trust would be responsible for consulting with local communities, as recommended in the report of the Commission on Land and Local Governance. The actual purchase of

development rights and properties could be done by the Provincial Land Section of the Department of Transportation and Infrastructure Renewal, which has considerable expertise and experience in this area.

The Commission recommends:

22. That the provincial government establish the Island Viewscape Trust; that it name an advisory body to administer the Trust; that the Trust consult with Island communities on the selection of viewscapes; and that the Land Section of the Department of Transportation and Infrastructure Renewal be given responsibility for negotiating the actual purchase of properties or development rights on behalf of the Island Viewscape Trust.

CREATIVE FINANCING FOR PRESERVING VIEWSCAPES AND FARMLAND

As it now stands, the provincial government owns approximately 6.9% of the Island's total land mass, amounting to 96,773 acres, only 1,346 of which is agricultural land. This is far less than the amount of publicly-owned land in any Canadian jurisdiction. As well, our province falls far short of the percentage of land it has pledged to protect under the *Natural Areas Protection Act*. Organizations like the Island Nature Trust and the Nature Conservancy of Canada have made significant contributions to the protection of natural areas and are to be commended for their efforts, but more is needed before it is too late.

The Commission believes funds allocated by government to the Island Farmland Trust and the Island Viewscape Trust could be supplemented by private funds. Many jurisdictions in Canada and elsewhere have used creative approaches to raise money from individual and corporate donors for the purpose of protecting public assets like farmland, viewscapes, and natural areas.

The Commission reviewed the history of the former Provincial Deposit Receipt (PDR) Program, which dates back to the 1940s. In 1980, changes were made to the program to make it more attractive to Islanders, and deposits grew from \$16 million to \$47 million in eight years. In 1990, government increased the interest paid because the short term interest rates at the time exceeded long term rates. By 1993, the total deposits had climbed to \$83 million, and this was followed by another round of changes to further increase the attractiveness and competitiveness of PDRs, mainly by allowing payroll deductions from provincial public servants.

In 1996-97, Executive Council reviewed options for reducing the cost of provincial debt, and found that the formula for establishing the monthly PDR interest rate resulted in it being higher than the floating money market rate. It was estimated that terminating the PDR Program would save the province \$2 million in interest costs annually and staff would be reduced by one person-year. On January 23, 1997, the province stopped receiving PDRs, and the *Deposit Receipt Act* was repealed.

There is no reason why a program like the Provincial Deposit Receipt Program couldn't be established for the express purpose of raising capital to buy significant parcels of Provincial Land, and viewscapes selected by the Island Viewscape Trust.

Also, just as individuals and corporations donate property to the Island Nature Trust and the Nature Conservancy of Canada, there is no reason why they couldn't be encouraged to do the same by the provincial government, in return for an income tax credit. The Commission understands that a tax credit can be issued, up to the fair market value of any land donated to the Crown or a Crown agency that is deemed to be ecologically sensitive, to be used to reduce taxes owing in the tax year (or carried forward for a maximum of five years). In the case of farmland, the amount of the tax credit would be limited to 100% of net income in that year. Also, in the case of donated farmland, the Canada Revenue Agency has more specific rules regarding capital gains, and these vary depending on whether or not the property is a qualified farm property.

The Commission recommends:

23. That the provincial government establish a new Provincial Deposit Receipt Program to raise private capital to buy significant parcels of Provincial Land and to supplement the Island Viewscape Trust; that government match private contributions on a dollar-for-dollar basis for at least ten years; and that individuals and corporations receive appropriate income tax consideration for cash, land or property development rights they donate to the Province.

The Commission suggests the provincial government re-enter the business of buying land using a mixture of public and private funds. Initially, government money will be required to acquire land and to provide leadership by example. There is no reason

why Islanders wouldn't respond positively, just as they so generously contribute to causes such as hospitals and secondary educational institutions. Individual citizens may well be prepared to contribute financially to protect farmland and viewscapes, provided they are encouraged to do so through forward-thinking government policies.

SUCCESSION

The larger a farm becomes, the harder it is to transfer from one generation to the next. Issues related to corporate succession have not been addressed adequately by government despite long-standing pleas from the agricultural industry for greater flexibility. There is no definite rule in the *Lands Protection Act* or the Regulations that provides guidance on this matter. IRAC deals with succession issues on a case-by-case basis.

The Commission believes greater flexibility, discretion and understanding are required, in the interests of fairness and common sense. For example, when illness, death or marital difficulties create a fact situation where there are no longer three equal partners, a farm corporation must be given sufficient time to rearrange matters and not be forced to make hasty decisions that may threaten its long-term viability.

The Commission recommends:

24. That the provincial government direct the Island Regulatory and Appeals Commission to allow a transition period of up to five years where a succession issue results in a farm corporation no longer having three equal shareholders. Should the five year grace period not be sufficient, an additional two years could be granted with the approval of Executive Council.

ADAPTING AGRICULTURAL POLICY TO THE *LANDS PROTECTION ACT*

The Commission heard loudly and clearly from the majority of Islanders who attended meetings and those who took the time to offer written submissions that the time has come for Prince Edward Island to re-think its agricultural policy. As stated earlier in this report, the PEI AgriAlliance has given a great deal of thought to the matter and, in its recently-released *Innovation Road Map*, lays out six priority areas for advancing innovation, growth and profitability for the agri-food sector.

The Commission claims no great expertise in the area of agri-food policy. However, we cannot ignore what we heard from the people, including many who are farmers. The time has come for a new approach.

With this in mind, and given our recommendations on aggregate land holding limits, the Commission believes the provincial government must develop a new agri-food policy which is built upon the firm foundation of the recommended limits.

The Commission recommends:

25. That the provincial government, in consultation with all farmers and farm groups, develop a new agri-food policy based on the aggregate land holding limits recommended by this Commission.

ONE-ACRE CURRENT EXEMPTION

When the *Lands Protection Act* was passed in 1982, any one (1) acre parcel situated within a municipality was considered exempt. This was subsequently amended to state that the one (1) acre parcel of land had to have been in existence as of March 1, 1995. In the Commission's view, there is no good reason why this arbitrary date was chosen nor why it should remain in effect.

The Commission recommends:

26. That the *Lands Protection Act* be amended so that any one (1) acre parcel of land situated within any municipality having an official plan is exempted from the application of the Act.

GEOINC AVAILABILITY

During discussions with the Prince Edward Island Young Farmers, the Commission learned from these energetic and enthusiastic future farm leaders that they find it difficult to determine who actually owns a particular parcel of land. No longer is there a public map library where one can go to examine ortho maps and determine ownership of lands. This information is essential to farmers to enable them to contact owners who might be interested in leasing or selling land.

The Commission recommends:

27. That a free GeoLinc service be made available in selected Access PEI centres.

ADVICE GOING FORWARD

While the Commission made every effort to consult with a broad cross-section of Islanders over a very brief period of time, it soon became evident that the issues were very complex. Many who attended several of the public meetings remarked to the Commissioner that they learned a great deal about the *Lands Protection Act*, but were overwhelmed by the multiplicity of factors the Commission was required to deal with.

The Commission was impressed by the learning that took place at many meetings. People holding diametrically opposed views spoke to and listened to one another, in a respectful and non-confrontational manner, and several submissions received by the Commission highlighted the value of the exchanges that took place during those meetings.

The Commission must comment upon the potential value of an ongoing dialogue on land ownership issues and to strongly encourage the provincial government to consult with Islanders more frequently regarding the *Lands Protection Act* and related matters.

As the Hon. Georges-Étienne Cartier, the Attorney-General of Lower Canada, stated so eloquently during the Confederation debates:

“...There are difficulties in the way, but they are susceptible of solution if managed with wisdom. All that is requisite to overcome difficulties is a strong will and a good heart...”

Cartier and the others were not looking solely at the immediate future, but well beyond the limit of human imagination. The bronze plaque erected outside the Confederation Chamber to mark the 50th anniversary of the Charlottetown Conference in 1864 reads:

“Providence being their guide, they builded better than they knew.”

The Commission believes, from what it has seen and heard, that there is a will to find consensus. But that alone will not suffice. We need a good heart and the wisdom to make the right choices.

The Commission recommends:

28. That the provincial government establish an advisory group made up of farmers and non-farmers that will consult with Islanders on matters related to the *Lands Protection Act* and report to the Legislative Assembly every three years.

Prince Edward Island will celebrate the 150th anniversary of the Charlottetown Conference in 2014. What better occasion to host a ‘Doers and Thinkers Conference’ on matters related to land ownership, a feature so unique and important to the history of our province?

The Commission recommends:

29. That, as part of the 2014 celebrations, the provincial government organize a Doers and Thinkers Conference involving farmers, researchers, policy experts, and leading Island thinkers, to discuss history, current status and future trends in land ownership as they apply to Prince Edward Island.

CONCLUSION

The power to determine what happens to the land and on the land has forever been a key component of Islanders' identity. Being a Canadian province grants us the gift of jurisdiction. The most important law in this land, the Constitution of Canada, protects our right to decide how much land a person or a corporation can own and control. We've decided to do that through the *Lands Protection Act*, a statutory instrument that remains virtually unchanged after more than three decades.

We can only imagine what might happen if Prince Edward Island were to become part of a Maritime or Atlantic Union. Since none of our neighbour provinces has land ownership legislation, our chances of protecting this all-important aspect of our jurisdiction would be threatened.

The *Lands Protection Act* was a ground-breaking piece of legislation when it was enacted in 1982 and it remains so today. Other jurisdictions, faced with pressures brought on by globalization and the increasing wealth of countries that are land-poor, face the same dilemma that we did more than thirty years ago: how to encourage economic development in a balanced manner, without losing control over our single most important natural resource.

The Commission believes all Islanders – and not just those who own large tracts of land – will recognize the importance of maintaining a balanced approach to regulating land ownership. The Act and the Regulations have withstood challenges and have generally met their established purpose. The Commission does not believe radical changes are necessary.

While there may be a continuing role in the regulation of land ownership by an

independent body, IRAC needs to change the way it operates and interacts with landowners, farmers in particular. Executive Council is made up of elected representatives who, on Islanders' behalf, should continue to have the final say over the most important land transactions.

On the questions of 'bigger is better' and 'bigger is more profitable', the real answer lies not in what is best for the landowner but in what is best for the land, and what is best for all Islanders. There is no evidence that concentrating land in the hands of fewer and fewer people will create the kind of wealth that will sustain rural communities. All indicators point in the opposite direction. But these topics go well beyond the Commission's mandate. They require further research and a dialogue between the people and their elected officials.

The Commission believes Islanders want their government to come up with a set of laws, agricultural policies and programs – including financial and technical assistance – that is designed around the land limits as they currently exist. Of what ongoing value is the gift of jurisdiction if our government cannot set out and achieve such a goal?

This being said, we understand the pressures farmers face. They have seen the value of equity built up in their farm operations decline significantly over the past few years as profit margins have shrunk and, in some years, turned negative. It is therefore not surprising that they want to take advantage of every possible avenue to improve profitability and re-establish healthier equity positions.

The purpose of changes recommended in this report is to make it easier for those who buy, sell and lease land to comply with the legislation, and for those who depend on food

production for their livelihood to maintain the land base required to remain profitable. There is no ‘one-size-fits-all’ approach.

Many of the recommended changes are incremental in nature, meant to simplify administration, to reduce the cost to government and to landowners, and to protect the integrity of the Island’s essential rural character. Some new ideas are presented for preserving landscapes, for making the intergenerational transfer of lands less onerous, and for re-establishing government’s role in land banking.

The Commission has heard the voice of the people, and that voice is reflected throughout this report. As with many important issues, who owns and controls the land will remain a topic of public debate for as long as people call this special place home.

The Commission sincerely hopes that the recommendations contained in this report will be presented in the form of amendments to the *Lands Protection Act* and Regulations, and in the manner in which government agencies exercise their responsibilities under the Act. The Commission strongly advises government to consider the consequences of inaction. When laws are not respected, honest men and women end up doing things they shouldn’t do.

The Commission also hopes the public consultation process will have rekindled Islanders’ interest in the land question; not just who owns the land but how it is used. These two faces of the same coin are as important today as they were in 1982, and they are more critical to the future of rural Prince Edward Island today than they ever were.



APPENDIX I**LIST OF WRITTEN SUBMISSIONS****Written Submissions by Individuals and Corporations**

Scott Annear	Edith Ling
Harry Baglole	Lingdale Farms
Big Orange Lunchbox	Andrew Lush
Sandra A. Boswell	Terence MacDonald
Peter Bowl	Blair Macdonald
Bristol Berry Farm Inc.	Joe MacDonald
Doug Burton	Alexander (Sandy) MacKay
Randy Campbell	Corey MacLean
Carol Carragher	Robert MacLean
Lorne A. Carrier	Louise MacLeod
Tim Carroll	Margate Farms Ltd.
Leo Cheverie	George Matheson
Donald Cobb	Melaney Matheson
Karen Cobb	Terence McGaughey
Compton Brothers Inc.	Frank McGuirk
Kirsten Connor	Jenny McQuaid
Larry Cosgrave	Chris Mermuys
Elizabeth Dacombe	Mojca Morgan
Rodney Dingwell	William Morgan
Fred Dollar	Dan Murphy
Teresa Doyle	John Murphy
Jim Evans	Colonel Darrach Murray
Phil Ferraro	Chris Ortenburger
Brendan Flood	Paul Ortenburger
Claude E. Gallant	Amalia Peripoli
Paul A. Gallant	Reg Phelan
Dwight Gardiner	Lloyd Pickering
Cathy Grant	Andy Reddin
Daryl Guignon	Gail Rhyno
Ole Hammarlund	Rollo Bay Holdings Ltd.
Karl (Carlo) Hengst	Darlene Sanford
John Hopkins	Stella Shepard
Pieter Ijsselstein	James C. Travers, Q.C.
Ruth Inniss	John Venema
Dana Jeffrey	William Visser
Deborah Jeffrey	Walter Wilkins
Mathew R. Jelley	Dawn Wilson
Roy Johnstone	Carey Wood
Alvin Keenan	Jeff Wood
Charlie Lank	W.P. Griffin Inc.
David Ling	Wyman's of P.E.I.

Written Submissions by Groups:

P.E.I. Advisory Council on the Status of Women
P.E.I. Citizens Alliance
Don't Frack P.E.I.
Environmental Coalition of P.E.I.
P.E.I. Federation of Agriculture
P.E.I. Food Security Network
Gaia Women of P.E.I.
Green Party of P.E.I.
Institute for Bioregional Studies
Island Nature Trust
Latin American Mission Program
Lucy Maud Montgomery Land Trust
MacKillop Centre for Social Justice
National Farmers Union

P.E.I. Potato Board
P.E.I. Real Estate Association
P.E.I. Soil and Crop Improvement Association
Tourism Industry Association of P.E.I.
Winter River-Tracadie Bay Watershed Association
Wood Islands and Area Development Corporation
Island Regulatory and Appeals Commission
Department of Agriculture and Forestry
Department of Environment, Labour and Justice



APPENDIX II

ADDITIONAL CONSULTATIONS

Department of Innovation and Advanced Learning
Department of Agriculture and Forestry
Island Regulatory and Appeals Commission
Great Enlightenment Buddhist Institute Society
Moonlight International Foundation Inc.
Young Farmers of P.E.I.
Cavendish Farms
John Robinson
Elmer MacDonald
Leone Bagnall
Dr. Edward MacDonald
Ralph Thompson
Charles Murphy
Ian Petrie



APPENDIX III

PRIVATELY-FINANCED ISLAND FARMLAND TRUST

Prof. Tim Carroll of the University of Prince Edward Island's School of Business is developing a model for financing land acquisition through equity financing from investors not involved in farming, and who have no interest in becoming farmers. He attended several of the Commission's public meetings and presented his model at the meeting held in Wellington.

Agricultural land has proven, in most cases, to be a profitable investment and is therefore a good candidate for equity investors. However, it can be difficult financially for new entrants because low margins result in the present value of interest payments exceeding the present value of profits from the land for the first five to seven years.

There are practical reasons why agriculture does not attract equity investment. It is simply not possible for an individual investor to conduct due diligence for each farm, and the risk is increased by limiting investment to an individual farm operation. It is possible to overcome these limitations by separating the management of the asset from its ownership by setting up a land trust structure.

According to the UPEI School of Business model, the Island Farmland Trust would consist of a General Partner, the Government of Prince Edward Island, and limited partners, individual investors in the fund. Ownership, liability and responsibility for use of the land would rest with the provincial government. The limited partners would buy units and thereby provide capital to purchase farmland for the Trust.

The limited partners, unlike the General Partner, would have limited liability but

would hold a preferred position on the Trust's profits and capital gain from sale of the land. Limited partners' investments would be placed in a 'blind pool', meaning that the units they bought would be identified only as 'PEI farmland' and not a specific parcel or farm.

A prospectus for the Trust would define the specifics of the relationship between the limited partners and the General Partner, as required by securities legislation, as well as the Trust's management structure and business plan. Units would be sold by local stock brokerage firms, just like any other investment.

The model described by Prof. Carroll discourages the use of investment incentives such as tax credits to entice investors to purchase units in the Trust. He argues that such incentives would be appropriate for new, high risk innovations in manufacturing and technology, but not in an established and known industry like agriculture, seen by investors as a medium-risk, blue-chip, long-term investment that pays modest dividends.

The third element of the Island Farmland Trust would be the farm management company. The Trust's General Partner, the provincial government, would contract with a farm management company to manage the Trust's agricultural land for a fee of roughly 10-15% of the gross farm income. This fee would be paid to the farm management company before dividends were distributed to the limited partners.

A farm management company is described in the model as a relationship manager. Under contract to the General Partner, the company pursues the capital gain and profit objectives of the limited partners by arranging for the productive use of farmland each year.

Arrangements could include leasing, sharecropping, and lease-to-own. It would also be possible for the farm management company to farm the land itself, providing it was in compliance with the *Lands Protection Act*, the *Agricultural Crop Rotation Act* and other legislation.

Beyond simply managing farmland and crop production, other roles taken on by the farm management company would be determined by the limited partners, the investors. If the farm management company failed to perform, the General Partner and the limited partners would seek an alternative management

company. The selection of a replacement farm management company would be the responsibility of the General Partner, and this could be done through a request for proposals.

The Commission believes the UPEI School of Business model has merit but, as pointed out by Prof. Carroll, it requires further research and refinement. The Commission had neither the time nor the expertise to thoroughly analyze the concept but believes it should be included in future discussions regarding the Island Farmland Trust as an option to be considered.



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CANADA

