

Prince Edward Island Lands Protection Act

WHAT DOES IT
ALL MEAN?

Prepared by
Lynn Trainor
Land Policy Officer
Department of Agriculture and
Land



Why do we have the *Lands Protection Act*?

The purpose of the *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.

The Island Regulatory and Appeals commission is responsible for the general administration and enforcement of the Act, and for monitoring the land holdings of large landowners. It receives applications and collects all the information necessary to make informed **recommendations** to government with respect to land acquisitions governed by the Act. The ultimate decision is made by Executive Council.

Although there are provisions in the Act and regulations to exempt certain types of land from the calculation of a person or corporation's aggregate land holding, the established limits are fixed and do not allow for a person or corporation to exceed them. **Full stop.**

What are the limits?

- no person shall have an aggregate land holding in excess of 1,000 acres
- no corporation shall have an aggregate land holding in excess of 3,000 acres

Who needs to apply to IRAC?

Any **corporation** or **non-resident person** must make application **to acquire an interest in land** once the person or corporation has an aggregate land holding in excess of 5 acres or shore frontage in excess of 165 feet (including the land to be acquired).

What is "aggregate land holding"?

In the *Act*, for a person, it includes:

- (a) all land holdings of that person, and of the person's minor children;
- (b) the relevant amount of land holdings of any corporation in which the person, or any of them, hold more than 5 percent of the shares; and
- (c) the relevant amount of land holdings of any other corporation in which more than 5 percent 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.

Lynn



ABC Corp.
Lynn 33%
ownership



123 Corp.
ABC Corp.
50%
ownership



Lynn's
"aggregate
land holding"

For a corporation, it includes:

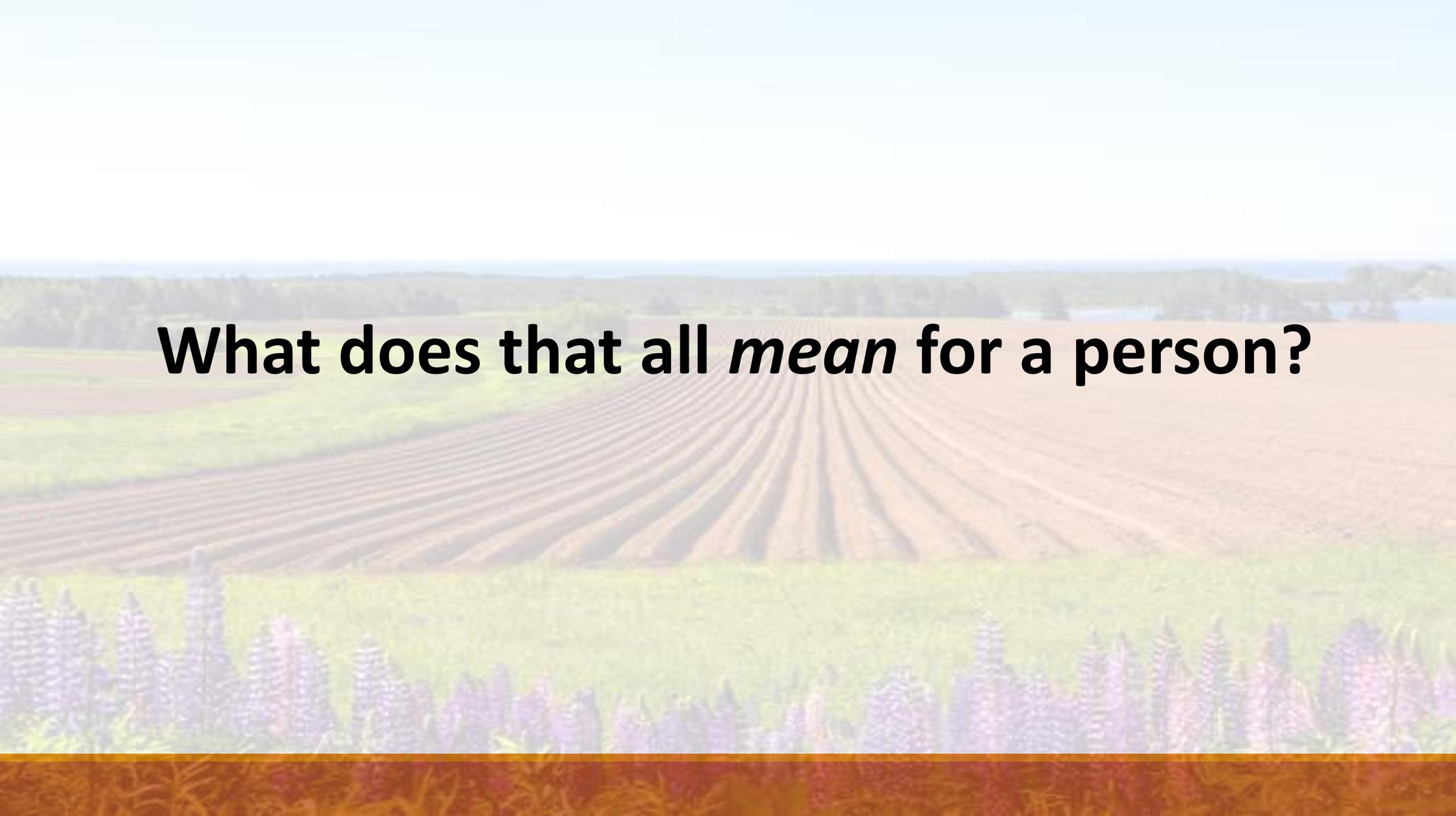
- (a) all land holdings of THAT corporation;
- (b) all land holdings of any person, and of the person's minor children, who holds more than 5 per cent of the shares in THAT corporation;
- (c) all land holdings of any other corporation that holds more than 5 per cent of the shares in THAT corporation; and
- (d) the relevant amount of land holdings of any other corporation in which more than 5 per cent of the shares are held by:
 - THAT corporation; a person referred to in (b); or a corporation referred to in (c)



What does *relevant amount* mean?

The relevant amount is determined by multiplying the total land holding of a corporation by the percentage of ownership in that corporation by any shareholder.

So, for the purposes of calculating aggregate land holding, if a corporation has a total land holding of 100 acres and an individual owns 50 of the 100 issued shares of that corporation, with 50% ownership of that corporation his/her ***relevant amount*** would be 50 acres towards his/her aggregate land holding (50% of 100 acres).



What does that all *mean* for a person?

Farm Co.

Lynn

1/3 partner

Lori

1/3 partner

Jim

1/3 partner

Farm Co.
3,000* acres owned

Lynn

1,000* acres
attributed

Lori

1,000* acres
attributed

Jim

1,000* acres
attributed

*any increase in land holdings by Farm Co, Lynn, Lori, or Jim will increase these numbers

Why you need at least 3 shareholders for a corporation to have 3,000 acres



*exceeds 1,000 acre limit for a person



What does that *mean* for a corporation?

Farm Co.

Lynn

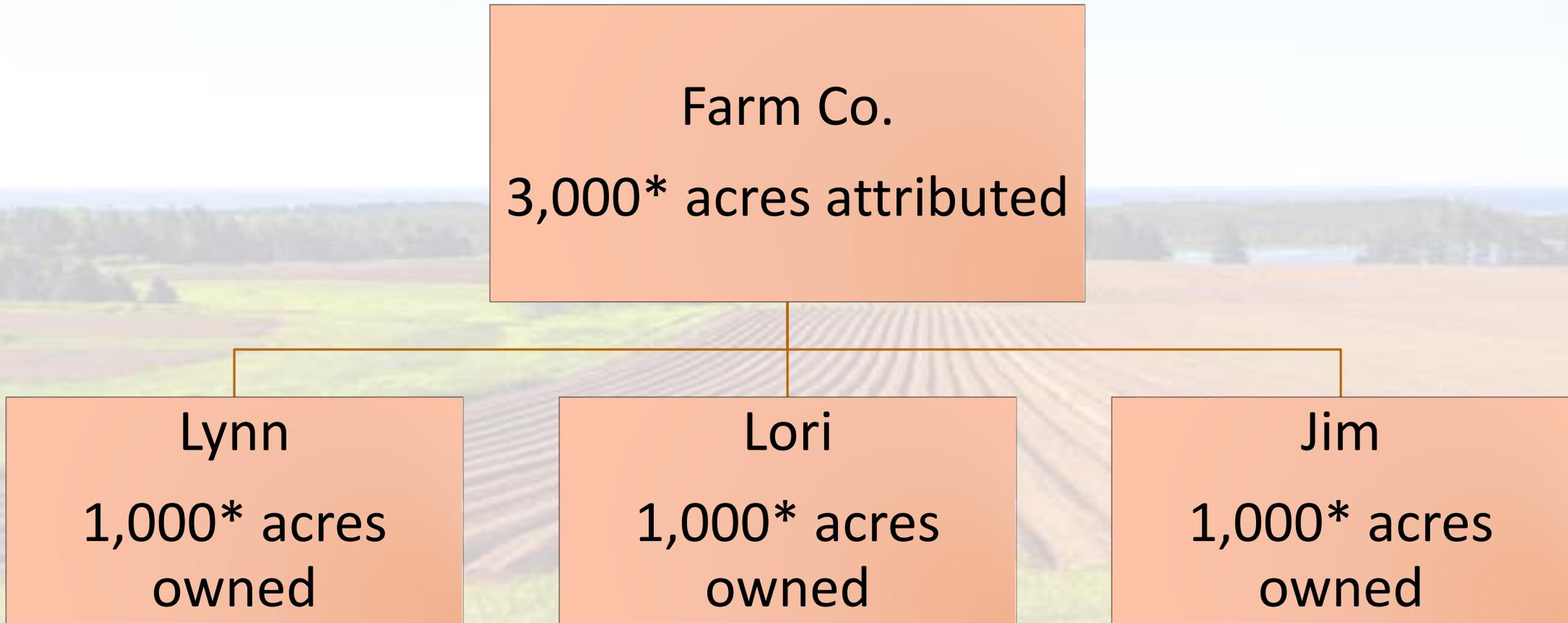
1/3 partner

Lori

1/3 partner

Jim

1/3 partner



*any increase in land holdings by Farm Co, Lynn, Lori, or Jim will increase these numbers

But wait - those elusive "exclusions" ...

For the purpose of calculating the aggregate land holding of a person or corporation, the Act contains certain provisions which can exclude certain types of land from the calculations of aggregate land holding. They include:

- the non-arable land holdings of the person, up to a maximum total amount of 400 acres, shall be excluded from the person's aggregate land holding; and
- the non-arable land holdings of the corporation, up to a maximum total amount of 1,200 acres, shall be excluded from the corporation's aggregate land holding.

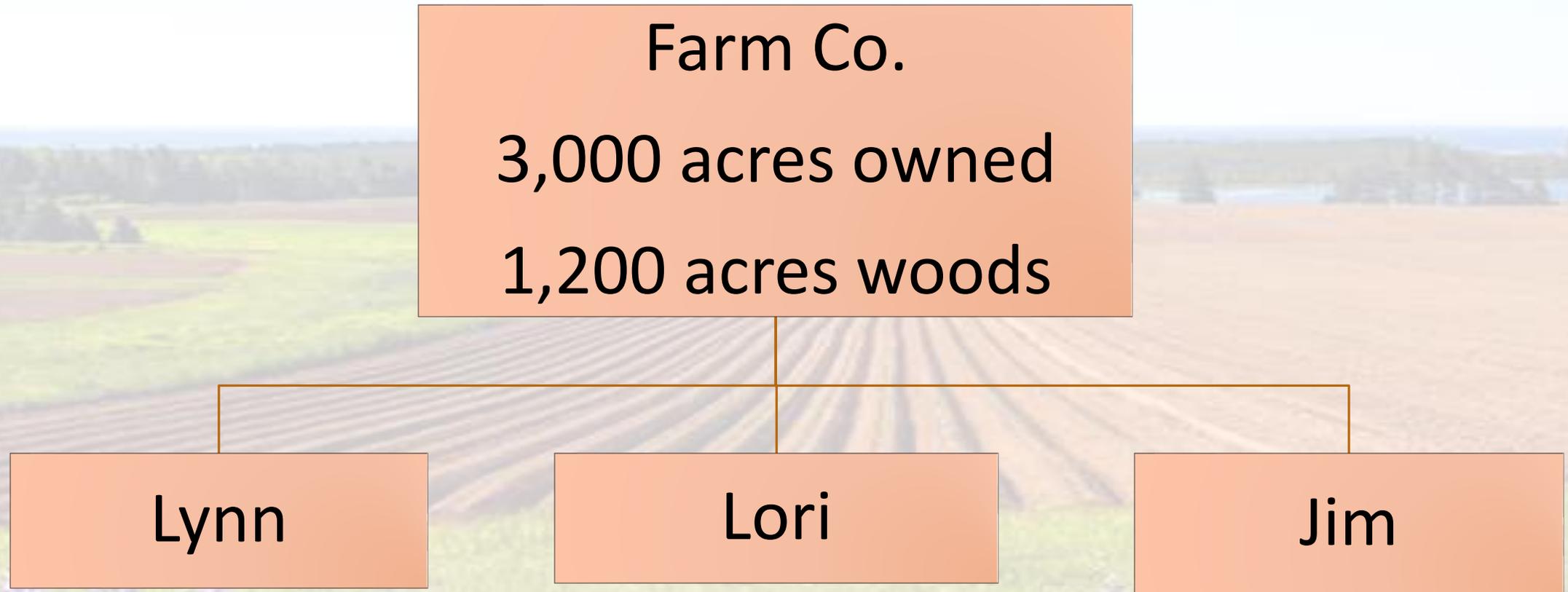
AND

- the land holdings that the person is leasing to another person or corporation, up to the lesser of one-half the total number of acres of arable land held by that person or 500 acres of arable land, shall be excluded from his or her aggregate land holding; and
- the land holdings that the corporation is leasing to a person or another corporation, up to the lesser of one-half the total number of acres of arable land held by that corporation or 1,500 acres of arable land, shall be excluded from the corporation's aggregate land holding.

** Note - arable land is land on which a temporary agricultural crop (i.e., a crop that is comprised of annual or biennial plants) is planted, or on which a temporary agricultural crop was planted at any time in the immediately preceding four years. Non-arable land is land that is not arable.

Also other exclusions, succession period, termination on lease by default, etc.

Let's try this again!



Farm Co.
1,800 acres "aggregate
land holding"

Lynn
600 acres
attributed

Lori
600 acres
attributed

Jim
600 acres
attributed

Farm Co.
3,000 acres owned
1,500 acres leased out
1,200 acres woods

Lynn

Lori

Jim

```
graph TD; A["Farm Co.  
900 acres 'aggregate  
land holding'"] --- B["Lynn  
300 acres  
attributed"]; A --- C["Lori  
300 acres  
attributed"]; A --- D["Jim  
300 acres  
attributed"]
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Farm Co.
900 acres "aggregate
land holding"

Lynn
300 acres
attributed

Lori
300 acres
attributed

Jim
300 acres
attributed

"Deeming" (Things just got complicated...)

Jack is involved in the farming industry and operates three different companies; one grows potatoes, one is involved in organic farming, and the other grows carrots. For the moment, we'll ignore the various statutory provisions that provide for various types of land to be excluded from a person's or corporation's calculations of their respective "aggregate land holding".

Let's look at the corporate structure of all three companies.

Potato Co. has 3 shareholders; Jack, Albert and Brian. Albert and Brian each own 24% of the corporation, and Jack owns the remaining 52%. The corporation owns 800 acres of land

Given we know a corporation's aggregate land holding *also* includes lands owned by its shareholders, in order to calculate its aggregate land holding, we would also need to determine what lands the shareholders own. For these examples, we'll assume none of the shareholders have any personal land holdings.

```
graph TD; A["Potato Co.  
800 acres"] --- B["Jack  
52% owner"]; A --- C["Albert  
24% owner"]; A --- D["Brian  
24% owner"];
```

Potato Co.
800 acres

Jack
52% owner

Albert
24% owner

Brian
24% owner

Organic Co. has 4 shareholders; Jack, Connie, Dave and Elaine. Connie, Dave and Elaine each own 16% of the corporation, and Jack owns the remaining 52%. The corporation owns 500 acres of land.



Organic Co.
500 acres

Jack

52% owner

Connie

16% owner

Dave

16% owner

Elaine

16% owner

Carrot Co. has 2 shareholders; Jack and Connie. Connie owns 40% of the corporation and Jack owns the remaining 60%. The corporation also owns 500 acres of land.



```
graph TD; A[Carrot Co.  
500 acres] --- B[Jack  
60% owner]; A --- C[Connie  
40% owner];
```

Carrot Co.
500 acres

Jack
60% owner

Connie
40% owner

So, what does this *mean*?

Because Jack is involved in all three of these corporations **and is the majority shareholder, or controls each one, and** "...a corporation and other corporations directly or indirectly controlled by the same person, group or organization shall be deemed to be one corporation", then Potato Co., Organic Co., and Carrot Co. are deemed to be one corporation because they are all controlled by Jack.

AND since a corporation's aggregate land holding is, among other things, comprised of all of its land holdings and all of its shareholders' land holdings...

Deemed Corporation
1,800 acres

Jack

Albert

Brian

Connie

Dave

Elaine

Deemed
Corporation
1,800 acres

Jack
416 acres Potato Co., 260 acres Organic Co., 300 acres Carrot Co.
= 976 acres

Albert
192 acres Potato Co.

Brian
192 acres Potato Co.

Connie
80 acres Organic Co., 200 acres Carrot Co.
= 280 acres

Dave
80 acres Organic Co.

Elaine
80 acres Organic Co.

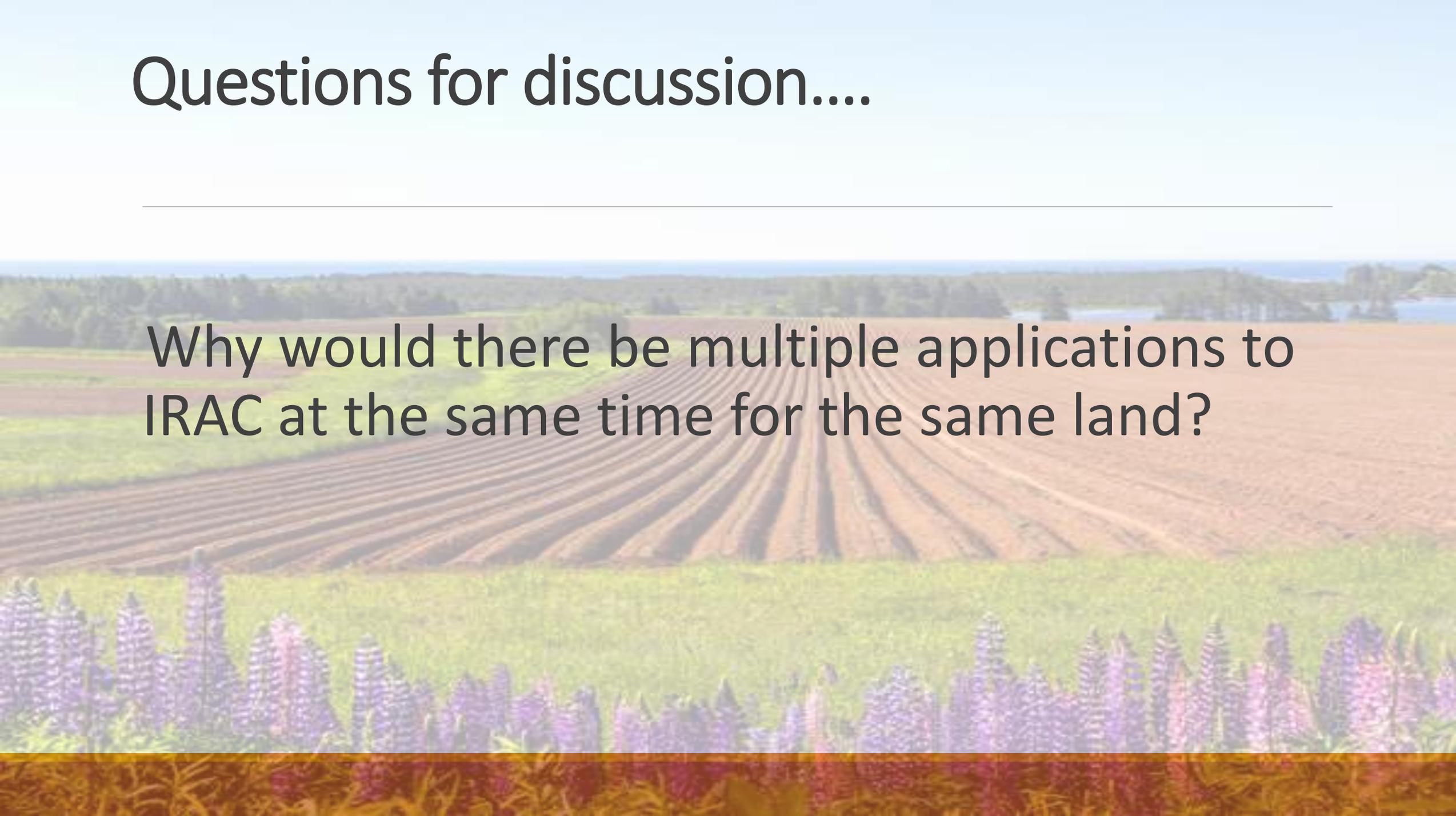
Growth

We know that any increase(s) in land holdings for any component of the deemed corporation (i.e. Potato Co., Organic Co., or Carrot Co.) or any increase in Jack's personal land holding, will increase his aggregate land holding, so at 976.00 acres, he doesn't have a lot of room to grow any of these operations.

Unless of course there was a reorganization of any of these corporations, reducing his ownership percentage. Something like that would change his "relevant amounts" that we referred to earlier...

Questions for discussion....

Why would there be multiple applications to IRAC at the same time for the same land?



4. A person who is not a resident person shall not have an aggregate land holding

(a) in excess of five acres; or

b) having a shore frontage in excess of 165 feet, measured in a line following the general trend of the shore frontage,

unless the person first receives permission to do so from the Lieutenant Governor in Council.

AND

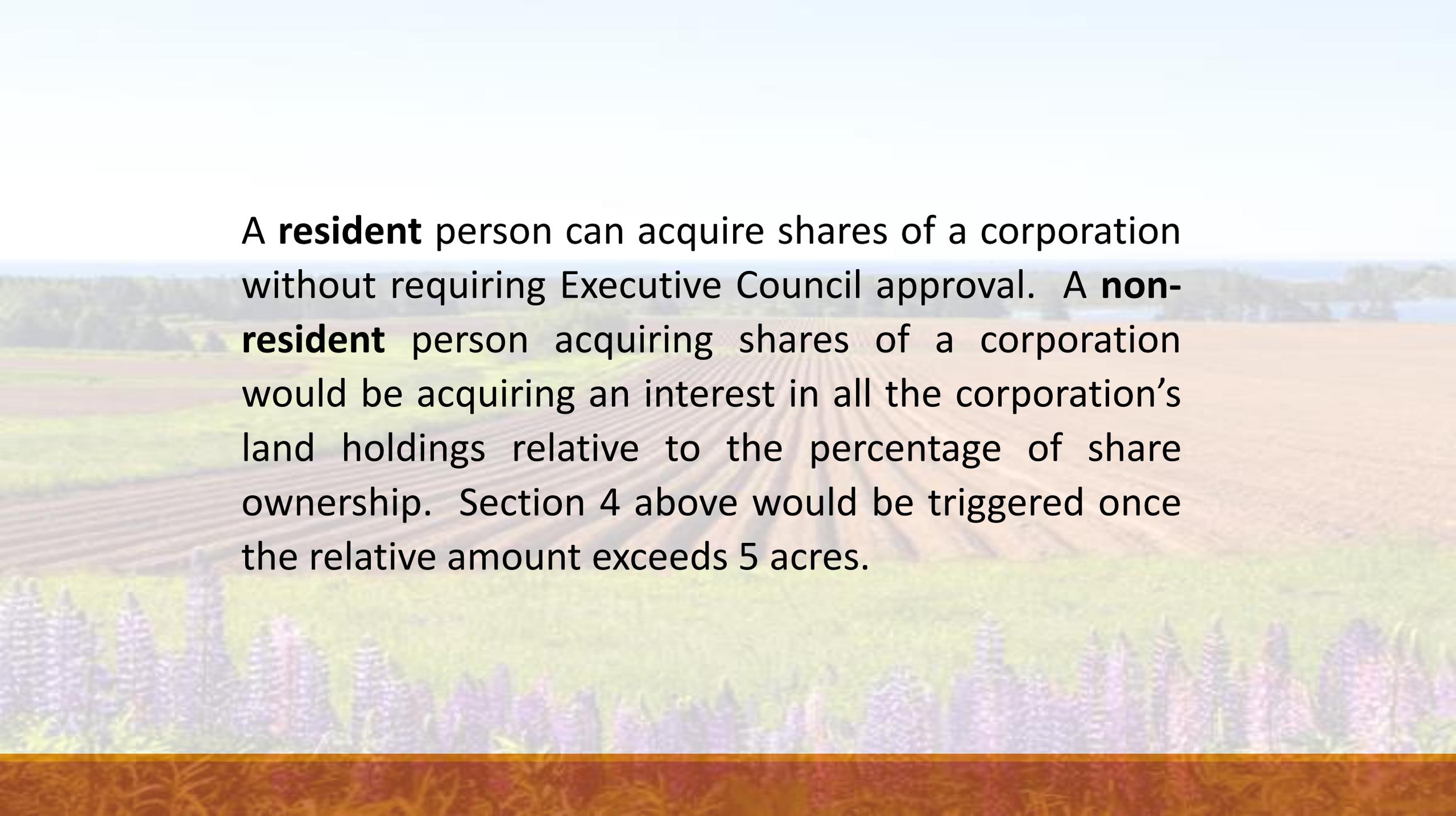
5. A corporation shall not have an aggregate land holding

(a) in excess of five acres; or

(b) having a shore frontage in excess of 165 feet, measured in a line following the general trend of the shore frontage,

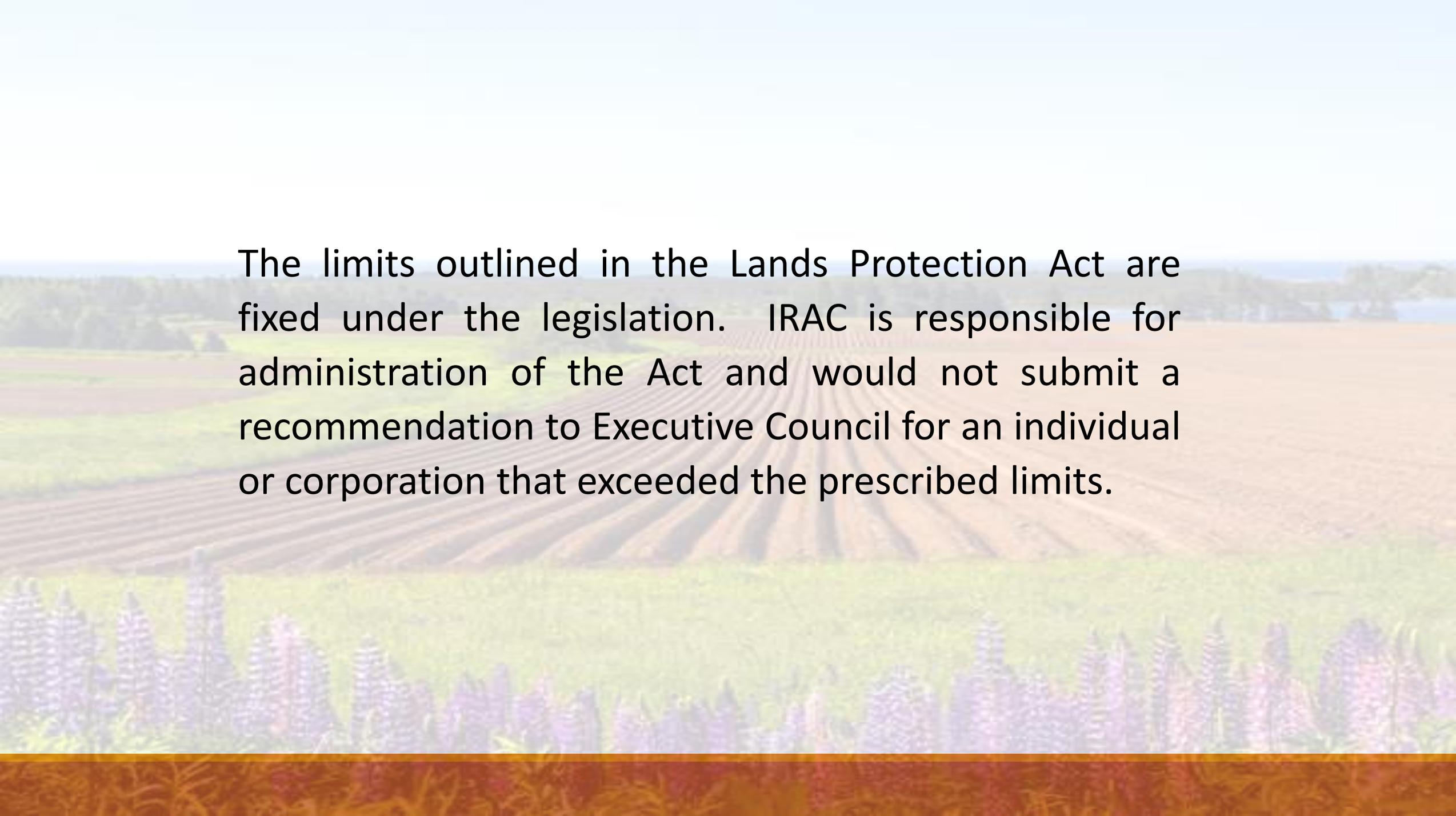
unless it first receives permission to do so from the Lieutenant Governor in Council.

Can you acquire land by purchasing shares of a corporation that owns land without receiving Executive Council approval?



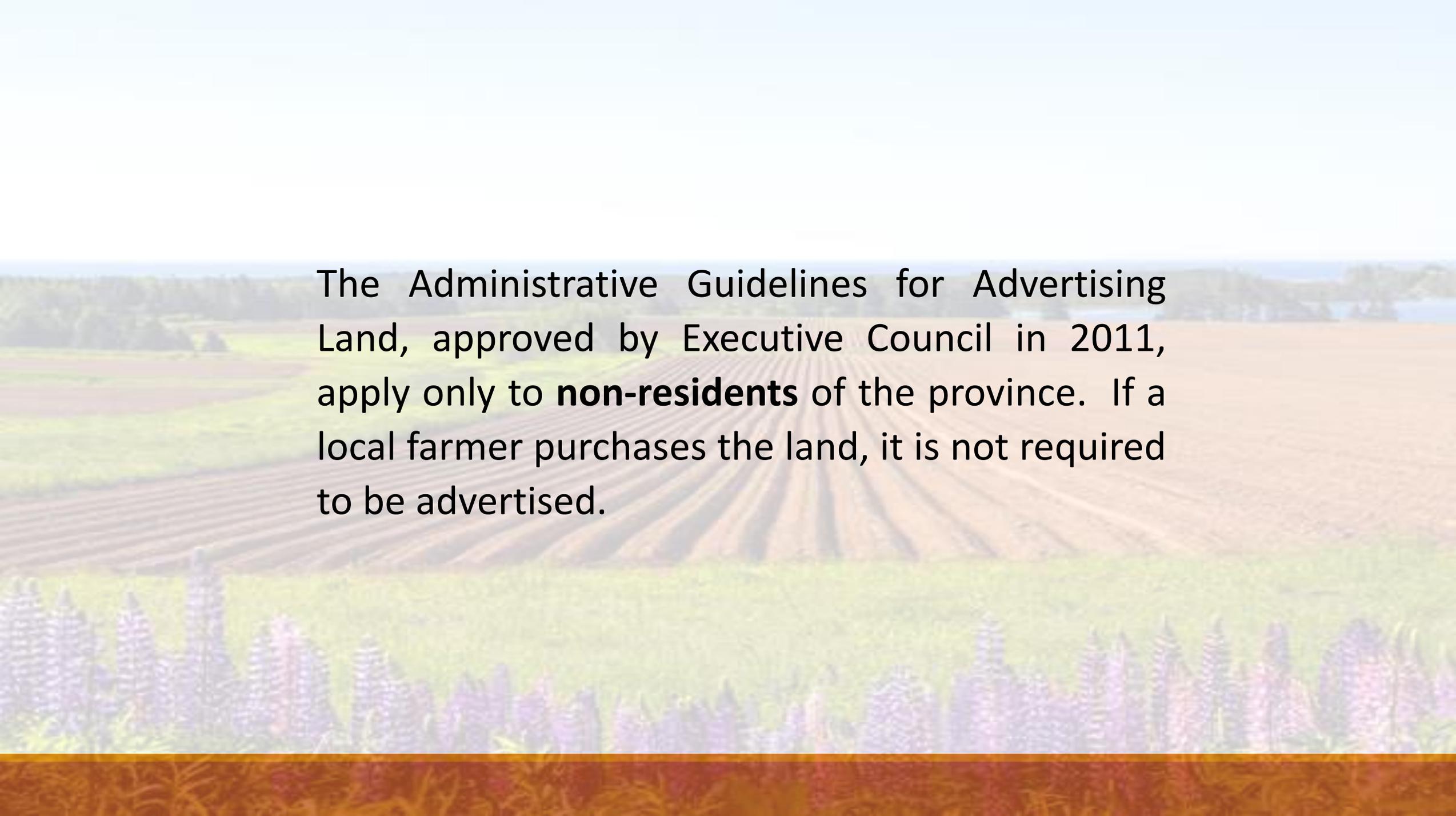
A **resident** person can acquire shares of a corporation without requiring Executive Council approval. A **non-resident** person acquiring shares of a corporation would be acquiring an interest in all the corporation's land holdings relative to the percentage of share ownership. Section 4 above would be triggered once the relative amount exceeds 5 acres.

Can Executive Council decide to approve a transaction that would put a person or a corporation over the 1,000 or 3,000 acre limit?



The limits outlined in the Lands Protection Act are fixed under the legislation. IRAC is responsible for administration of the Act and would not submit a recommendation to Executive Council for an individual or corporation that exceeded the prescribed limits.

How can land be sold without a local farmer even knowing it was for sale?



The Administrative Guidelines for Advertising Land, approved by Executive Council in 2011, apply only to **non-residents** of the province. If a local farmer purchases the land, it is not required to be advertised.

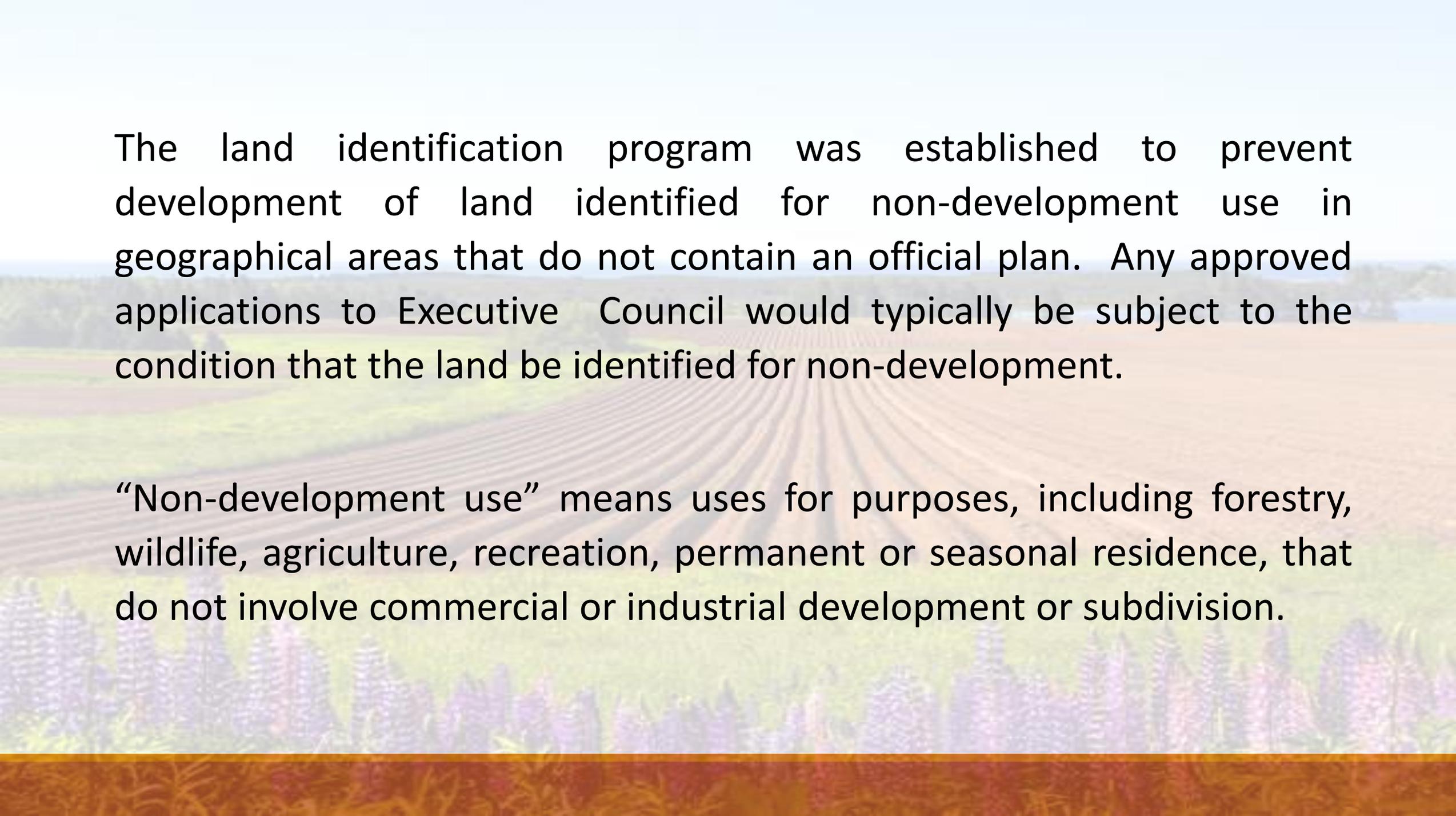
How can a non-resident person acquire land exceeding 5 acres without Executive Council approval?



The Exemption Regulations established under the Lands Protection Act state that “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.

What are the Land Identification Regulations?





The land identification program was established to prevent development of land identified for non-development use in geographical areas that do not contain an official plan. Any approved applications to Executive Council would typically be subject to the condition that the land be identified for non-development.

“Non-development use” means uses for purposes, including forestry, wildlife, agriculture, recreation, permanent or seasonal residence, that do not involve commercial or industrial development or subdivision.

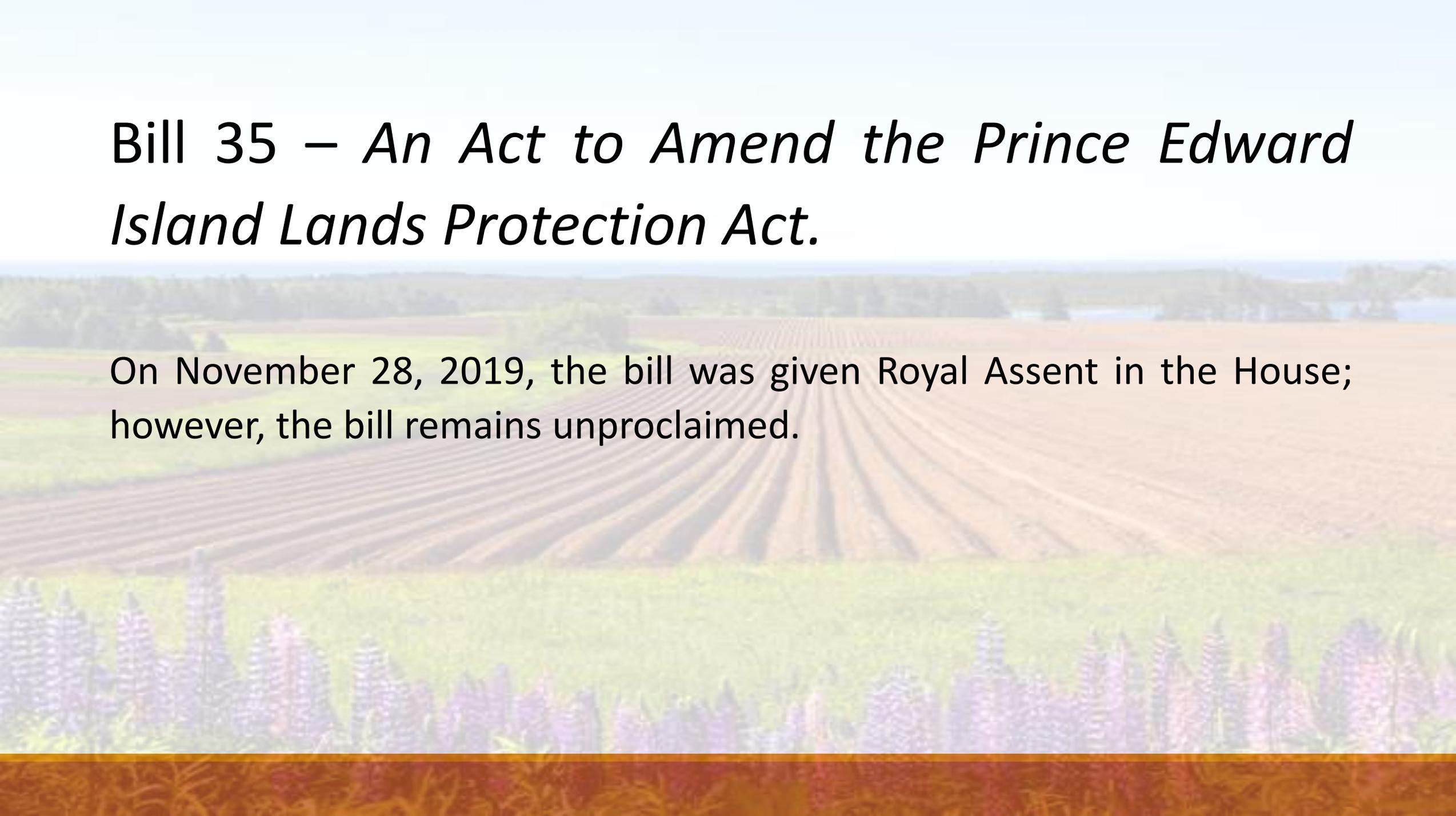
Prior to 2015, land identified under the program was identified in perpetuity unless a notice of termination was served on the Minister, in which case it expired on the expiration of ten years from the anniversary date next following the date of receipt of the notice; however, there also existed a process whereby an application could be made to Executive Council to cancel or amend identification.

In January 2015, amendments to the Act were enacted whereby identification would automatically expire in 10 years, plus the process to apply to Executive Council for an amendment or cancellation still exists. This new expiration provision was retroactive.

This amendment came as a result of a recommendation contained in the Carver Report from 2013. The report asserts that the LPA is not the correct statute for planning and development control, but rather the *Planning Act* would be more appropriate. The amendment was adopted despite the absence of a mechanism to deal with land development/use in rural areas.

As a result of this change, at the time the provision came into effect, roughly 237,000* acres of previously identified lands were automatically de-identified.

*information provided to Department from IRAC



Bill 35 – *An Act to Amend the Prince Edward Island Lands Protection Act.*

On November 28, 2019, the bill was given Royal Assent in the House; however, the bill remains unproclaimed.

Changes in "Deeming" (Things just got *more* complicated...)?

Currently, a corporation and other corporations directly or indirectly controlled by the same person, group or organization shall be deemed to be one corporation – *controlled* is not defined, but is widely interpreted to be >50% of the shares.

Under the new bill, corporation is still defined in this same manner, although the meaning of *control* in this context is further explored and would apply to an individual or group who have shares that carry 25% or more of the voting rights.