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February 11, 2026

VIA EMAIL – mwalsdoucette@irac.pe.ca

Michelle Walsh-Doucette
Commission Clerk
Island Regulatory and Appeals Commission
National Bank Tower, Suite 501
134 Kent Street, Charlottetown PE C1A 7L1

Re: Appeal Docket #LA25025
Mike James and Sheldon Stewart v. Minister of Housing, Land and Communities
Our File Number: 27598-023dk

1. We represent the Appellants, Mike James and Sheldon Stewart (the "Appellants"), in relation to the above noted appeal, made on December 9, 2025, to the Island Regulatory and Appeals Commission (the "Commission"), pursuant to section 28 of the *Planning Act*, R.S.P.E.I. 1988, P-8, as amended, (the "Act").

2. These written submissions are in response to the written submissions filed on behalf of the Minister of Housing, Land and Communities (the "Minister"), dated and submitted to the Island Regulatory and Appeals Commissions on January 22, 2026 (the "Minister's Brief").

3. The Appellants agree with the submissions contained in paragraphs 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Minister's Brief. The Appellants deny the claims contained in the balance of the Minister's Brief.

4. The Appellants intend to file expert reports in support of the appeal, which will be served on the Respondent and filed with the Commission in due course. The Appellants reserve the right to file additional, brief written submissions following the filing of the reports.

The Subdivision Application and Context

5. The subdivision application was submitted on March 14, 2025. The application fee of $2,922.50 was paid on or about March 18, 2025. The Application was for a subdivision of a parcel of land into 26 smaller lots.[1]

6. The Application is not for a change of use. The land was previously approved for a change of use from Resource to Residential on or about November 25, 2024.[2]

[1] See Minister's Record of Decision, Tab 3.
[2] See Minister's Record of Decision, Tab 4.

7. The subject parcel has Provincial Identification Number 88567.

8. The parcel has not been farmed or used for commercial agricultural purposes since the Appellants purchased it in 2021.

9. The Minister's decision letter denying the subdivision application is dated November 20, 2025 (the "Minister's Decision")[3]

10. The Minister's deputy provided the following comments in the Minister's Decision:

> *The Proposed Subdivision is considered inconsistent with provincial policies aimed at protecting farmland and coastal areas. The development would convert high-quality agricultural land, potentially impact buffer zones, fragment the rural landscape and create long-term conflicts and infrastructure costs.*
>
> *This subdivision would create a detrimental impact as defined in the Planning Act Subdivision and Development Regulations. It would increase coastal and flood risk, reduce and break up good farmland, raise land-use conflicts and erode rural and tourism values. It does not align with the provincial goals to protect farmland and sensitive coasts.*

11. The Minister's Decision is silent on the subdivision application's adherence to the prescribed requirements for subdivision plans, or for minimum lot requirements, open spaces, buffer zones, roadways, etc.

12. The subdivision plan meets the prescribed conditions and statutory minimum requirements for a Subdivision under the Act and the Subdivision and Development Regulations (the "Regulations"). The subdivision plan is approvable.

13. The Appellants claim that should any objective issues with the prescribed requirements exist in respect of the subdivision application, which is not admitted, then any such issues are minor issues and mitigatable issues.

14. The Minister's Decision cites sections 3(1)(a) and (d), and 13(a), (b), and (j) of the Regulations. The Appellants challenge the merits of the Minister's Decision and the process followed in reaching it.

The Test and the Powers of the Commission on Appeal

1. The Commission affirmed the test for appeals relating to ministerial decisions under the Act in in *Stringer (re)*[4]. The test is as follows:

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[3] See Minister's Record of Decision, Tab 1.

[4] *Stringer (re)*, Donna Stringer v. Minister of Communities, Land and Environment, Order LA 17-06 ("*Stringer*") at para 52.

i. Whether the Minister, as the land use planning authority, followed the proper process and procedures as required in the Regulations, in the *Planning Act*, and in the law in general, including the principles of natural justice and procedural fairness, in deciding on an application; and

ii. Whether the Minister's Decision with respect to the application has merit based on sound planning principles within the field of land use planning.

2. The Appellants submit that the Minister failed both steps of this test.

3. The Act provides that decisions made by the Minister under the Act may be appealed to the Commission pursuant to section 28 of the Act.

4. The question of the scope of an appeal to the Commission has previously been considered in the Prince Edward Island Court of Appeal in both *Provincial Tax Commissioner v. Maritime Dredging Ltd.*[5] at para 23, and in *Reference Re: Island Regulatory and Appeals Commission Act and The Constitution Act*,[6] paras. 9 and 10.

5. The First case dealt with an appeal to the Commission of a decision under the *Revenue Administration Act*, 1990 c.54 R.S.P.E.I. 1988, R-13.2, and the second decision dealt with an appeal to the Commission of a decision under the *Planning Act*. In both cases, the Court of Appeal found that a decision to the Commission constituted a hearing de novo.

6. Under a hearing de novo, the Commission is not conducting an administrative review of a decision on the basis of reasonableness or correctness. The Commission is further not conducted a 're-hearing'. McQuaid J.A. in *Maritime Dredging*, in discussing the Court's disposition in *Reference Re: IRAC*:

> *The issue of whether an appeal to the Commission is a hearing de novo was recently considered by this Court in the context of sections 28 and 37 of the Planning Act, R.S.P.E.I. 1988 Cap. P-8. The Court concluded that an appeal under those provisions was a hearing de novo primarily because the relevant legislation contemplated and intended that an appeal to the Commission would be the first opportunity for interested parties to participate before a tribunal. See: Reference Re: Island Regulatory and Appeals Commission Act and The Constitution Act, [1997] P.E.I.J. No. 70 (Q.L.) (P.E.I.S.C.A.D.), paras. 9 & 10.*[7]

7. The Commission's role in hearing appeals is to consider the relevant application materials, evidence, witnesses, and experts, as the case may be, and to make a decision that is appropriate on the merits in respect of the relevant law and regulations.

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[5] *Provincial Tax Commissioner v. Maritime Dredging Ltd.,* 1997 CanLII 4574 (PE SCAD), (*Maritime Dredging*").
[6] *Reference Re: Island Regulatory and Appeals Commission Act and The Constitution Act*, [1997] PEIJ No. 70 (QL) (PEISCAD) ("*Reference Re: IRAC*").
[7] Supra, 5, at para 22.

8. The Commission considered this question in *Charlottetown (City) v. Island Reg. & Appeals Com.*:

> *[38] In my opinion, it was also within the Commission's mandate to decide the application on its merits. Following a Reference in 1997, the Court of Appeal held that the Legislature contemplated and intended that appeals under the Planning Act would take the form of a hearing de novo, after which the Commission, if it so decided, could substitute its decision for the one appealed (Island Regulatory and Appeals Commission (Re) , [1997] 2 P.E.I.J. 70.*
>
> *[39] Following the Reference case, the Commission formalized a two-part test that summarized its previous analysis of its role. The Commission employs this test as a guideline in determining planning appeals. As it applies to the circumstances of this case, after carrying out step one and quashing the Council decision for failing to follow proper process and procedure, the Commission could and should move forward to step two. Here, the Commission considers whether the City's decision with respect to the proposed rezoning and bylaw amendment has merit based on sound planning principles within the field of land use and urban planning and as enumerated in the Official Plan.*[8]

9. The Commission issued a decision in 2023, in *Lucas Arsenault, Jennie Arsenault and L&J Holdings Inc. v. Minister of Agriculture and Land*,[9] where it quashed a decision of the Minister and substituted a new decision. In *Rice Point*, the Commission substituted the Minister's Decision, even where the Commission had not made a finding that the Minister had erred in respect of process and procedure.

10. The Minister's Record does not support a finding that the Minister is entitled to deference by the Commission.

11. This appeal is the first time the Appellants will be heard in respect of their application since the date the subdivision application was filed. This is the first hearing of this matter.

The Appellants' Position

Step 1: Processing the Application

12. The first step as articulated in *Stringer*[10] requires the Commission to consider whether the Minister followed the popper process and procedures as required:
    i. in the Regulations;
    ii. in the Act; and
    iii. in the law in general, including:
        i. the principles of natural justice and procedural fairness.
13. The Minister did not follow the proper process and procedures in respect of the Regulations and the Act.

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[8] *Charlottetown (City) v. Island Reg. & Appeals Com.*, 2013 PECA 10 (CanLII), at paras 38 and 39.
[9] *Lucas Arsenault, Jennie Arsenault and L&J Holdings Inc. v. Minister of Agriculture and Land*, 2023 PEIRAC 4 (CanLII) ("*Rice Point*").
[10] *Supra*, 4.

14. The Minister's Decision did not opine on the subdivision application's adherence to the prescribed requirements or statutory minimum requirements set out in the Regulations.

15. The subdivision plan is adherent to the objective criteria of the Regulations. The subdivision plan is an "approvable" plan.

16. The subdivision plan's adherence to the objective law is a strong factor in favour of its approval. It is a relevant and important consideration. The Minister's silence on the plan's adherence to the prescribed requirements is a procedural error.

17. This procedural error creates a substantive error, because it impairs the Minister's ability to balance the various factors and indicia in favour of or against a subdivision approval.

18. The Minister's process artificially inflates the alleged detrimental impacts and ignores the strong objective factors in favour of approval.

19. For this reason, the Minister's Decision is procedurally unfair.

Agricultural Land/ Farm Land

20. The Minister conducted procedural errors in the evaluation of agricultural land and farm land issues in respect of the subdivision application.

21. The Minister failed to consider the fact that the land was already approved for a change of use. The parcel's land use is not Resource (Agriculture). The parcel's land use is Residential (single unit dwelling) which is consistent with the proposed use for each proposed lot in the subdivision. This is a material fact that did not appear in the Minister's Decision. This is a procedural error. This is also a substantive error, which will be addressed later in these written submissions.

22. The Minister's deputy did not speak to the Appellants about the land use. The Appellants were not provided the opportunity to be heard on this issue. As a result, the Minister concluded wrongly that the land was being used for agriculture. The Appellants would have told the Minister's agents that the land had not been planted since before 2021.

23. The Minister's deputy proceeded to a decision without following fair processes, and without obtaining all the necessary information. These errors in processing the subdivision application caused prejudice to the Appellants.

Watercourse and Wetland Protection

24. The Minister conducted procedural errors in the evaluation of watercourse and wetland protection issues in respect of the subdivision application.

25. The Minister's Decision is silent on the fact that on Thursday, May 1, 2025, Environmental Assessment Officer Dale Thompson, confirmed that there were "no unmapped protected environmental features" on the subject parcel.

26. The Minister's deputy did not speak to the Appellants about any concerns in respect of watercourse or wetland. The Appellants were not provided the opportunity to be heard on this issue.

27. The procedure for preliminary approval provided for at section 26(2)(b)(iii) was not at any time triggered or, apparently, considered.

28. The proper process and procedure in respect of evaluating watercourse and wetlands was not followed by the Minister. This resulted in an incomplete factual record in the Minister's Decision, which prejudiced the Appellants.

Public Road and Highway Access

29. The Minister conducted procedural errors in the evaluation of highway access and roadway design issues in respect of the subdivision application.

30. The Minister did not consider the roadway design or the Department of Transportation and Infrastructure's findings in the Minister's Decision.

31. The Minister's agent did not speak to the Appellants about any concerns in respect of the road design in the subdivision plan. The Appellants were not provided the opportunity to be heard on this issue or to provide solutions to the subdivision plan, should such proposals be necessary.

32. The procedure for preliminary approval provided for at section 26(2)(b)(iv) was not at any time triggered or, apparently, considered.

33. The Appellants' willingness to adjust the subdivision plan's roadways was never canvassed.

34. The proper process and procedure in respect of evaluation of roadway design was not followed by the Minister. This resulted in an incomplete factual record, which prejudiced the Appellants.

Reasonable Process Not Followed

35. The Minister failed to follow a reasonable process in keeping with the standards of natural justice and procedural fairness.

36. The Minister failed to write a decision that considered and balanced all the relevant provisions of the Act and Regulations.

37. The Minister failed to consider all the necessary evidence developed through the relevant government departments.

38. The Minister failed to provide the Appellants with the opportunity to be heard in respect of watercourse and wetland issues, or highway access and roadway issues, which is contrary to the ordinary procedure, and applicants' reasonable expectations, in these types of applications. This failure seriously prejudiced the Appellants.

39. The Minister's procedural errors resulted in a decision that was procedurally unfair, and ultimately substantively unsound due to the lack of necessary information and evaluation.

40. The Minister's Decision should not be afforded deference.

Step 2: Sound Planning Principles and Detrimental Impact

41. The second step, as articulated in *Stringer*[11], requires the Commission to consider whether the decision has merit with respect to sound planning principles in the field of land use planning.

42. Practicality requires a slightly broader investigation under step two. This step looks at all the subjective elements of the application review process that require discretionary decision making supported by land use planning expertise. In this appeal, the relevant elements are sound planning principles under section 13 of the Regulations, and detrimental impact under section 3(1)(d) of the Regulations.

43. The Minister is responsible for exercising discretion as an administrative decision maker.

44. The Commission's Order in *Rice Point* provides useful guidance on the appropriate application of discretionary decision making in respect of subjective and interpretive elements of the Act and Regulations. The *Rice Point* Order deals with similar issues that exist in this appeal. Relevant excerpts from the Order include, without limitation:

> *19. The Report, which can be summarized as a largely subjective analysis of various planning concepts, is helpful in understanding some of the analysis and considerations used to guide the Minister's decision in this case; however, it is not without significant flaws. Many of the papers, recommendations, statements, and policies relied upon in the Minister's Report are not anchored in Act, Regulations, or sound planning principles. The authorities cited are reports and white papers that have been developed by or submitted to Government over decades. They consist of multiple land use reviews by various lay person panels who made proposals for future land use policy. They contain blue sky proposals and desires that amount to wishes, not law.*

[11] *Supra*, 4.

> 23. *Decisions of the Minister must be rooted in and made in accordance with the legislation. Discretionary provisions in the legislation must be interpreted using sound planning principles.*
>
> 32. *Ms. Tsang* [the appellants land planning expert] *correctly identifies the need to review the proposal against the existing regulations in place to protect the natural environment. This includes the lot size requirements for on-site well and septic systems, as well as setbacks from the coastline to address erosion and flooding.*
>
> 36. *Tsang provided testimonial evidence that sound planning principles require a balance between, among other things, preserving agricultural land, the need for population growth and housing needs. Tsang's expert evidence is that in the field of land use planning, agricultural land uses, and low-density residential land uses are not considered incompatible; rather, in a rural setting, low density residential would be one of the most compatible land uses with agriculture. Tsang's professional opinion is that the development is compatible with the surrounding land uses.*
>
> 37. *The Commission accepts and agrees with Tsang's expert opinion.* [12]

45. The Minister cannot rely on policies and goals. The Minister must rely on the law, which is set out in the Act and the Regulations.

46. The Minister further cannot pick out discreet provincial interests in the Act and use them to justify what are essentially "blue sky proposals" not actually codified in the law.

47. We interpret the Minister's Brief at paragraphs 44, 65, and 66, to suggest that the "Provincial interests" in section 2.1(1) of the Act are sufficient to anchor policies or goals to sound planning principles in the legislation.

48. This is incorrect and inconsistent procedurally and substantively with the Minister's responsibility.

49. The Provincial interests set out in section 2.1(1) of the Act guide the Minister in administering the Act. They guide the Minister, for example, in what kinds of Regulations he should enact in order to process development permit applications and subdivision applications.

50. The "Provincial interests" are high-level, subjective, and interpretive. They do not create substantive law. They are not conditions precedent for subdivision approval, and they are likewise not sufficient grounds for dismissal of an application. They do not individually equate to sound planning principles.

51. The Minister is legally responsible to conduct comprehensive evaluations of subdivision applications, applying the whole of the Act and Regulations fairly.

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[12] *Supra* 9, at paras 19, 23, 32, 36, and 37

52. The Minister must exercise judgement, but the Minister cannot decide to amplify certain provisions while ignoring others.

Sound Planning Principles

53. Section 13 of the Regulations sets out principles related to sound planning. The Minister's Decision flags subsections 13(a), (b), and (j) in his denial, which state as follows:

> *13. Principles*
>
> *Subdivision designs shall be based on sound planning, engineering, and environmental principles, and shall demonstrate that the proposed subdivision is suited to the intended use, having due regard for*
>
> *(a) compatibility with surrounding uses;*
>
> *(b) the topography of the site;*
>
> *… and,*
>
> *(j) natural features.*

54. The Minister's Decision is not based in sound planning principles.

55. The Minister's Decision appears to rely exclusively on Chrystal Fuller's planning review dated September 2, 2025 (the "Planning Review").

56. The Planning Review is not a complete review of the subdivision application.

57. Ms. Fuller appears to have only considered subsection 3(d) of the Regulations.

58. The Planning Review did not consider any objective criteria or statutory minimum requirements. In Ms. Fuller's own words, "instead of focusing on lot size and engineering details, this assessment examines whether the proposal would have a detrimental impact in the statutory sense, looking at public health, safety, the natural environment and compatibility with surrounding land uses."[13]

59. Detrimental impact is defined in section 1(f.3) of the Regulations, and provides as follows:

> *1. Definitions*
>
> *In these regulations*
>
> *(f.3) "detrimental impact" means any loss or harm suffered in person or property in matters related to public health, public safety, protection of the natural environment and surrounding land uses, but does not include*

[13] See Minister's Record of Decision, Tab 1, page 8.

potential effects of new subdivisions, buildings or developments with regard to

(i) real property value;
(ii) competition with existing businesses;
(iii) viewscapes; or
(iv) development approved pursuant to subsection 9(1) of the Environmental Protection Act; [emphasis added]

60. The Planning Review is a limited review of the subdivision application looking for detrimental impact.

61. This approach was a procedural error with substantive effect.

62. The Minister's Brief states at paragraph 36 that the Minister's agents considered the Planning Review to be a "comprehensive and objective Planning Report". On its face, it was not.

63. The Minister's Brief implies in paragraph 37 that the findings in the Planning Review recommendations constitute sound planning principles. The Minister's Brief claims that the Minister would have made a substantive error had he not followed the recommendations. This claim is legally incorrect. The Minister is responsible under the principles of natural justice to exercise judgement in the administration of the Act and Regulations. Blind adherence is not a just exercise of discretionary power.

64. The Planning Review recommendations do not constitute sound planning principles, and in choosing to copy-paste adopt them, the Minister erred in his responsibility to fairly adjudicate the Act and Regulations.

65. The Appellants will retain a land use planning expert who will author a comprehensive review of the subdivision application including in respect of the objective and subjective requirements under the Act and Regulations, and responding where necessary to the Planning Review.

66. The Appellants reserve the right to file supplementary written submissions following the filing of the expert report.

Section 3(1) of the Regulations, and Detrimental Impact

67. Section 3(1) of the Regulations provides as follows:

3. General requirements - subdivisions
(1) No person shall be permitted to subdivide land where the proposed subdivision would
(a) not conform to these regulations or any other regulations made pursuant to the Act;

(b) *precipitate premature development or unnecessary public expenditure;*
(c) *in the opinion of the Minister, place pressure on a municipality or the province to provide services; or*
(d) *have a detrimental impact.*

68. The Minister's Decision denies the subdivision application for subsections 3(a) and 3(d) of the Regulations.

Subsection 3(1)(a), Nonconformity to the Regulations

69. The Minister's Brief implies in paragraph 28, that the comments from the Department of Environment, Energy and Climate Action and the Department of Transportation and Infrastructure informed the Minister's decision to deny the subdivision application. That is specifically not reflected in the Minister's Decision.

70. The Minister made no findings in respect of the objective criteria under the Act or Regulations in the Minister's Decision.

71. The Minister's Decision explicitly denied the subdivision application for subjective and interpretive reasons only.

Detrimental Impact

72. The Minister's Brief asserts at paragraphs 27 and 47 that the Regulations prohibit the subdivision of land where the proposed subdivision would have a detrimental impact. The assertion is rooted in the language of section 3(1)(d) of the Regulations.

73. The Minister's Brief seems to imply that where a proposed subdivision can be found to have any detrimental impact, the Minister is obligated to deny the application.

74. This interpretation of the law is incorrect.

75. Land planning relies on balancing complex and sometimes divergent interests.

76. An evaluation of detrimental impact is intrinsically a process of balancing the benefits and detriments that a proposed subdivision may cause.

77. The Minister's Decision did not conduct this balancing assessment. This is evident on the face of the Minister's Decision, because the Minister relied on a report that primarily considered detrimental impact and did not consider the whole of the subdivision application.

78. The Appellants will retain a land use planning expert who will author a comprehensive review of the subdivision application as required under the Act and the Regulations.

79. The Appellants reserve the right to file supplementary written submissions following the filing of their expert report.

80. The Appellants will now make preliminary comments on the Minister's Decision and the Planning Review's findings on detrimental impact.

- Coastal Considerations, Buffer Zone

81. The Minister's Decision claims "The Proposed Subdivision is considered inconsistent with provincial policies aimed at protecting coastal areas" and would "potentially impact buffer zones". The Minister's decision claims the subdivision "would increase coastal flood risk" and that it "does not align with provincial goals to protect ... sensitive coasts."[14]

82. The Minister's Decision does not identify the "provincial policies" that the subdivision would allegedly infringe. The Minister's Decision does not identify the provincial "goals" that the subdivision would allegedly infringe.

83. The Minister's Decision does not acknowledge that the subdivision plan design is compliant with sections 1(e) and 3 of the *Environmental Protection Act*, R.S.P.E.I. 1988, E-9, as amended, Watercourse and Wetland Protection Regulations, and with sections 14(3)(a)(viii), 16, and 56(1) of the Regulations.

84. The Planning Review misapplies the law of buffer zones and coastal areas.

85. The Planning Review does not identify the correct buffer zone for the subject property.

86. The subject property does not require a 60 foot buffer zone under section 16 of the Regulations, because the subject property is adjacent to neither a beach nor a dune.

87. The subject property does not require a 500 foot buffer zone.

88. The subdivision application is compliant with the objective criteria for buffer zones set out in the Regulations and the *Environmental Protection Act*, Watercourse and Wetland Protection Regulations.

89. In the Planning Review, Ms. Fuller claims "The first line of defence in areas without a Land Use Plan is prevention to preserve the natural coasts and enhance public safety."[15]

90. Ms. Fuller's assertion is wrong. Where no specific law applies, the Minister cannot unilaterally enact a policy of prohibition. Prince Edward Island operates in a constitutional federation subject to the rule of law. We are a nation of laws. The Minister's decision must be seated in statutory authority because no other authority is vested in him.

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[14] See Minister's Record of Decision, Tab 1, page 5 and 16
[15] See Minister's Decision Record, Tab 1, page 10.

91. Further, there is no evidentiary support for the alleged coastal impact. The evidence in the Minister's Record establishes this parcel is a "low" flood hazard in 90% of the parcel and a "moderate-low" flood risk in a further 5% of the parcel.[16]

92. The Planning Review erroneously claims the subdivision application would "convert a working field". The field is not farmed and has been approved for residential use.

93. The Planning Review claims the conversion from agriculture to residential would negatively impact erosion. This is contrary to an expert opinion accepted by the Commission in Order LA23-04, which states at paragraphs 33 and 34 as follows:

> *33. From a technical perspective, the proposed development could be approved based on the regulations20. The development meets the minimum lot size requirements, and the Department of Environment, Energy and Climate Action did not raise any concerns with coastal erosion upon its review of the proposal21. Peter Joostema, submitted an expert report and testified at the hearing. Joostema opined that changing the current use of the property from agricultural to residential, as proposed, would actually result in less erosion²2. In Joostema's opinion, the detrimental impacts related to the natural environment is considered to be minimal based on the current use of the land.*
>
> *34. The Commission finds the evidence supports that the proposal would not have a detrimental impact.*[17]

94. The Planning Review further relies on speculation about future armament of the buffer zone. This is not rooted in fact. Buffer armament in the future is not a relevant consideration under the Act and Regulations. Buffer armament is within the Province's jurisdiction to regulate in the future. The Buffer zone in the proposed subdivision is open space that would not belong to individual lot owners, and would not be subject to individual lot armament.

95. Erosion is a reality in Prince Edward Island, and while presumptively knowing this the legislative assembly has not prohibited development in coastal areas.

96. The Minister's evidence demonstrates the subject property has low erosion rates at 8 cm/ year.[18]

97. The Minister's Decision does not specifically identify any contraventions of the *Environmental Protection Act*, Watercourse and Wetland Protection Regulations. Should any contraventions be found in a comprehensive review of the subdivision application, these will be minor and mitigatable contraventions. The Appellants are ready and willing to undertake adjustments to the subdivision plan should they be deemed necessary by a comprehensive review.

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[16] See Minister's Decision Record, Tab 6C, page 55 – 56.
[17] *Supra 9*, at paragraphs 33 – 34.
[18] See Minister's Decision Record, Tab 5, page 36; and Tab 6C, Page 55.

- Coastal Consideration, Special Planning Area

98. The Planning Review does not consider the relevant considerations for the property being in the Princetown Point – Stanley Bridge Special Planning Area.

99. Pursuant to section 56 of the Regulations, subdivision in the Special Planning Area must be within 1,000 feet of the shore.

100. While "shore" is not defined in the Act or Regulations, it does appear in a definition in the *Environmental Protection Act*, Watercourse and Wetland Protection Regulations, at section 1(ee), which provides a watercourse means as follows:

> "watercourse" means 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;

101. Based on the above, we conclude that "shore" includes the boundary of the watercourse along the subject property.

102. The subject subdivision plan is within 1,000 feet of the shore, and is compliant with the requirements of the special planning area.

103. Sections 56, 57, and 58 of the Regulations provide for no special buffer zone considerations.

104. The subdivision application is therefore compliant with the Regulations and is within the intended purpose of the Special Planning Area as set out in the Regulations.

- Agricultural Considerations

105. The Planning Review erroneously claims the proposed subdivision is on ~ 12 ha of "active farmland".[19]

106. The land has not been farmed since 2021.

107. The land has been approved for change of use from resource to residential.[20]

108. The Minister's Decision claims, "The Proposed Subdivision is considered inconsistent with provincial policies aimed at protecting farmland..." and "would convert high-quality agricultural land". The Minister's Decision claims the subdivision would "break up good farmland" and that it "does not align with provincial goals to protect farmland".[21]

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[19] See Minister's Record of Decision, Tab 1, page 7.
[20] See Minister's Record of Decision, Tab 4, pages 33 – 34.
[21] See Minister's Record of Decision, Tab 1, page 5 and 16.

109. The Minister's Decision does not identify the "provincial policies" that the subdivision would allegedly infringe. The Minister's Decision does not identify the provincial "goals" that the subdivision would allegedly infringe.

110. The Minister's Decision is based on erroneous and irrelevant information in respect of agricultural use of the land.

- Conflicts with Rural-Urban Interface

111. The Planning Review's commentary on rural-urban interface is not relevant to the subject application.

112. The Planning Review does not cite sources on this issue.

113. The Planning Review erroneously frames the parcel as farmland. The land is not farmed.

114. The proposed subdivision would not create urban residential density.

115. The future purchasers of this land will know they are purchasing property adjacent or in proximity to farmland.

116. Residential and summer-use-only lots exist throughout this community, including without limitation along the Browns Road, MacEwen Lane, Otter Way, Morrison Lane, and throughout the community of New London. No evidence of conflict in these areas is reflected in the Minister's Record or Decision.

117. The Appellants reiterate that they will file a comprehensive review of their subdivision application and reserve the right to make further written submissions on this issue thereafter.

- Tourism and Rural Character

118. This Appellants submit that the Planning Review's analysis of tourism and rural character is speculative and highly interpretive, and fails to consider balance between the potential benefits and risks of development.

119. The analysis is in no way related back to the Act or Regulations. The analysis is not connected to any law or enactment in Prince Edward Island.

120. The analysis is neither substantive nor informative enough that it can reasonably inform an administrative decision.

121. The analysis erroneously considers the parcel as agricultural. The parcel has already been approved for change of use from resource to residential.

122. The Appellants reiterate that they will file a comprehensive review of their subdivision application and reserve the right to make further written submissions on this issue thereafter.

Conclusion

123. The appeal is a hearing de novo. The Minister should not be afforded deference by the Commission.

124. The Minister did not follow the proper process in considering the subdivision application.

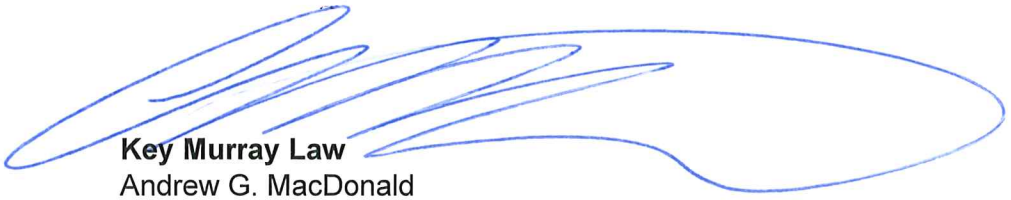
125. Procedural errors caused unfairness to the Appellants and resulted in substantive errors in the Minister's Decision.

126. The Minister did not follow sound planning principles in reaching the Minister's Decision.

127. The Minister's Decision should be set aside, and a new decision on the subdivision application should be made by the Commission.

128. The Commission should approve the subdivision application. In the alternative, the Commission should provide preliminary approval of the subdivision application with conditions as necessary and appropriate under the Act and Regulations.

The Foregoing is Respectfully Submitted on Behalf of the Appellants



Key Murray Law
Andrew G. MacDonald
Derek D. Key, K.C.

CC: Mitch O'Shea and Christiana Tweedy