



Prince Edward Island

Justice and
Public Safety

Legal Services
PO Box 2000
Charlottetown PE
Canada C1A 7N8

Île-du-Prince-Édouard

Justice et
Sécurité publique

Services légaux
C.P. 2000
Charlottetown PE
Canada C1A 7N8

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VIA EMAIL – mwalshdoucette@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 #LA26008
James Jordan and Suzanne Jordan v. Minister of Land and Environment
Our File: LS 28483

1. We represent the Minister of Land and Environment (the “Minister”) in relation to the above noted appeal filed by James and Suzanne Jordan (the “Appellants”) on June 23, 2026, and amended on July 20, 2026 (the “Notice of Appeal”).¹
2. In reference to Rule 27 of the Rules of Practice and Procedure, the Minister takes no position on the Commission’s acceptance of the Notice of Appeal as amended.
3. The Notice of Appeal arises from the Minister approving the applications of Sticks and Stones Developments Inc. (the “Developer”) to subdivide (consolidate) three parcels, being PID#s 812941, 812917 and 115599, located at Route 16, Monticello, Township 43, Kings County (the “Subject Properties”) into a single lot, and establishing the use of the Subject Properties as Recreational.
4. It is the Minister’s position that the decision to approve the application is in accordance with the *Planning Act*, RSPEI 1988, Cap P-8 (the “Act”), the *Planning Act Subdivision and Development Regulations*, PEI Reg EC693/00 (as amended) (the “Regulations”) and sound planning principles.
5. Further, it is the Minister’s position that the true essence of certain issues raised by the Appellants are grounded in nuisance and enforcement and compliance, thus, respectfully, these issues fall outside of the Commission’s statutory jurisdiction.

¹ Record of Decision Prepared by the Minister of Land and Environment (“Minister’s Record”), Tab 2.

Background and Decision

6. On March 13, 2025, the Minister received the Developer's first subdivision of land and change of use application (the "CU-2025-018 Application"). The Developers paid the required fees for the CU-2025-018 Application on March 14, 2025.²
7. The CU-2025-018 Application sought a change of use of PID#s 812917 and 812941 to Recreational Use for a proposed 9-hole golf course.
8. On January 5, 2026, the Developer amended the CU-2025-018 Application (the "Revised CU-2025-018 Application"). The Revised CU-2025-018 Application sought a change of use of the Subject Properties to Recreational Use for a proposed 12-hole golf course. The stated hours of operation are from 5:00 a.m. to 9:00 p.m. with six to ten staff.³
9. On April 15, 2026, the Minister received a further subdivision of land and change of use application from the Developer (the "Subject Application"). The Developer paid the required fees for the Subject Application also on April 15, 2026.⁴
10. The Subject Application sought to consolidate the Subject Properties into one lot and incorporated the requested change of use of the Subject Properties from Resource Use to Recreational Use for a proposed 12-hole golf course with pro shop, concession and maintenance facility. The stated hours of operation were daylight hours from April to November with nine full-time employees.
11. On June 4, 2026, pursuant to the Act, the Regulations and sound planning principles, as identified by Land Use and Planning Act Specialist, Alex O'Hara, RPP, MCIP, MRTPI, AssocRICS, CAHP-Intern, EPt, MSci ("Mr. O'Hara") in his planning report dated May 21, 2026, and revised June 3, 2026 (the "Planning Report")⁵, the Minister approved the Subject Application to subdivide (consolidate) the Subject Properties into a single lot approved for Recreational Use, subject to the following conditions:
 - (i) Additional approvals and/or permits will be required prior to the start of construction. This may include but not limited to, construction plans, comprehensive site plans, stormwater management plan, water usage plan and the requirement for a Building Permit and adherence to the National Building Code.
 - (ii) Use of existing highway access only unless otherwise approved by the Department of Transportation, Infrastructure and Energy (the "Decision").⁶
12. For greater certainty, the Decision is in relation to the consolidation of the Subject Properties into a single lot and the establishment of the Subject Properties for Recreational

² Minister's Record, Tab 3.

³ Minister's Record, Tab 4.

⁴ Minister's Record, Tab 5.

⁵ Minister's Record, Tab 6.

⁶ Minister's Record, Tab 1.

Use. In accordance with the Regulations, further permits/approvals will be required by the Developer from the Minister prior to the construction of any proposed structures.

Notice of Appeal

Scope of Appeal

13. The Notice of Appeal is pursuant to section 28(1) of the Act, which states:

28(1) Subject to subsections (1.2) to (4), an aggrieved person may appeal, by filing a notice of appeal with the Commission, a decision of the Minister made in respect of an application for

- (a) development permit;*
- (b) a preliminary approval of a subdivision or a resort development;*
- (c) a final approval of a subdivision;*
- (d) the approval of a change of use; or*
- (e) any other authorization that the Minister may grant or issue under the regulations.*

14. As determined by subsection 28(1) of the Act, the scope of the appeal is therefore limited to the Decision, being a decision made by the Minister in respect of an application for final approval of a subdivision and the approval of a change of use. Accordingly, the Commission's jurisdiction is limited to reviewing the Decision and any other decisions issued by Government Departments are not properly before the Commission.
15. The Appellants grounds of appeal and relief sought are as set out in the Notice of Appeal.
16. The Minister is providing the Record of the Decision to the Appellants and Developer and filing same with the Commission on the same date as the within submissions are dated.
17. The Minister's response to the Notice of Appeal is outlined below. Should the Appellants expand on, provide further explanation for, and/or otherwise provide submissions on the grounds of appeal, including expert evidence, the Minister reserves the right to provide a further reply thereto.

Aggrieved Persons

18. As held by the Commission at paragraph 23 of Order LA26-09⁷, the Commission must be satisfied that the Appellants meet the standard of an "aggrieved person" and demonstrate that they, in good faith, believe the Decision will adversely affect the reasonable enjoyment of their property.

⁷ *Judy Shaw v Rural Municipality of West River*, Order LA 26-09 at para 23.

19. In light of the Appellants' property sharing a common boundary with the Subject Property, and subject to the Commission's determination of the issue, the Minister does not take issue with the Appellants being aggrieved persons in accordance with subsection 27.1(d) of the Act.

Legislation

20. Sections 2 and 2.1 of the Act outline the Purpose of the Act, as well as the Provincial Interests that outline the Minister's responsibilities in relation to planning matters and proposed developments under the Act.
21. Subsection 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and the Regulations.
22. The Regulations apply to all areas of the province, except those municipalities with official plans and bylaws. The Subject Property is located in Monticello, which is an area where land use and development are not regulated by a local official plan or zoning by-law. Therefore, the land use and development of the Subject Property is regulated by the Act and the Regulations.
23. The following definitions set forth in the Regulations are relevant to the Appeal:

1 Definitions

In these regulations

*(d) "**change of use**" means*

(i) altering the class of use of a parcel of land from one class to another, recognizing as standard classes residential, commercial, industrial, resource (including agriculture, forestry and fisheries), recreational and institutional uses, or

(ii) a material increase in the intensity of the use of a building, within a specific class of use as described in subclause (i), including an increase in the number of dwelling units within a building;

*(k.2) "**lot**" means a measured parcel of land having fixed boundaries;*

*(q.1) "**recreational use**" means the use of land or buildings for passive or active recreational entertainment, pursuit or sport, including but not limited to golf courses, marinas, ski parks, hiking and cycling trails, parks, playgrounds and their amenities;*

*(v.1) "**subdivide**" means*

(i) to divide a parcel of land to create two or more new parcels of land,

(ii) to consolidate two or more contiguous parcels of land to create a new parcel of land, or

(iii) to attach a part of a parcel of land to another parcel of land contiguous to that part to create a new parcel of land,

by means of a plan of subdivision, a plan of survey, an agreement, a deed or any other instrument, including a caveat, that transfers or creates an estate or interest in the new parcels of land created by the division, or in the new parcel of land created by the consolidation or the attachment, as the case may be;

[emphasis added]

24. Subsection 3(1) of the Regulations outlines situations where subdivision is not permitted:

3(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.

25. The Minister is authorized to issue a subdivision approval with conditions pursuant to subsections 4(1) and 4(2) of the Regulations:

4(1) An approved subdivision or development permit may be made subject to any conditions necessary to ensure compliance with these regulations, other regulations made pursuant to the Act, or any relevant sections of the Environmental Protection Act, Roads Act, Provincial Building Code Act RSPEI 1988, Cap. P-24 , or the Fire Prevention Act RSPEI 1988, Cap F-11.

(2) Where a person is granted an approved subdivision or development permit subject to conditions in accordance with subsection (1), that person shall ensure that the subdivision or development complies with the conditions.

26. The Minister, however, is not authorized to issue an approval until other approvals have been obtained as appropriate pursuant to section 5 of the Regulations:

5 No approval shall be given pursuant to these regulations until the following permits or approvals have been obtained as appropriate:

- (a) where an environmental assessment or an environmental impact statement is required under the Environmental Protection Act, approval has been given pursuant to that Act;*
- (b) where the Fire Marshal's approval is required pursuant to the Fire Prevention Act, approval has been given pursuant to that Act;*
- (c) where approval is required pursuant to the Lands Protection Act RSPEI 1988, Cap L-5 or regulations made pursuant to that Act, approval has been given pursuant to that Act and any applicable regulations made pursuant to that Act;*
- (d) where, pursuant to the Roads Act, an entrance way permit or approval is required, the required permit or approval has been obtained; and*
- (e) revoked by EC222/22.*

27. Standards dealing with the subdivision of land are set out at Part III of the Regulations. Subsection 12(1) and section 29 of the Regulations, respectively, outline when subdivision approval and change of use approval are required:

12(1) Subdivision approval

Subject to sections 2.1 and 2.2, no person shall subdivide land without first obtaining final approval of the subdivision from the Minister.

...

29 Change of Use

(1) No person shall deviate from an existing land use or an approved plan of subdivision, including changing the use of a lot from the approved use, unless a revised plan of subdivision, where applicable, and an application for a change of use has been submitted to, and has been approved by, the Minister.

Idem

(2) Where a change of use application has been made, the Minister, in reviewing the application for a change of use, may take into consideration any written submissions received from the owners of lots within 330 feet (100 metres) of the lot to which the application applies.

28. Section 11 of the Regulations also provides that the Minister *may* hold a public meeting regarding any subdivision or development proposed under the Regulations with the requirements for calling said public meeting being specified at subsection 11(2) of the Regulations.
29. Section 13 of the Regulations enumerates the principles applicable to subdivision design:

13 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;*
- (c) surface drainage on the site and its impact on adjacent parcels of land;*
- (d) traffic generation onto adjacent highways;*
- (e) availability, adequacy and the economical provision of utilities and services;*
- (f) the ability to further subdivide the land or adjoining land;*
- (g) the provision of lots suitable for the intended use;*
- (h) waste water management;*
- (i) water supply; and*
- (j) natural features.*

Test

30. In Order LA17-06 ("*Stringer*")⁸, the Commission established the applicable test for Ministerial decisions made under the Act and Regulations. This test was further clarified in Order LA25-02 ("*Aftab*"), being described as a two-part guideline in exercising appellate authority:
- i. whether the Minister followed the proper procedure as required by the Planning Act, the Regulations and the law in general, including the duty of procedural fairness, in making the decision; and*
 - ii. whether the Minister's decision was made in accordance with the Planning Act, the Regulations and was based on sound planning principles in the field of land use planning.*⁹
31. In *Aftab*, the Commission reiterated previous decisions in stating that it "does not lightly interfere with decisions made by a planning authority."¹⁰
32. Deference is therefore owed to the Minister in properly made planning decisions. A decision is properly made where it is consistent with sound planning principles and is supported by objective and reliable evidence.¹¹

⁸ *Stringer (Re), Donna Stringer v Minister of Communities, Land and Environment*, Order LA17-06 ("*Stringer*") at para 52.

⁹ *Parry Aftab and Allan McCullough v. Minister of Housing, Land and Communities*, Order LA25-02 ("*Aftab*") at para 27.

¹⁰ *Aftab* at para 28.

¹¹ *Ibid.*

33. In relation to this matter, the Minister did follow the proper process as set out by law and did apply sound planning principles from a land use planning professional, and, therefore, deference is owed.

Test Application

Step 1: Processing of the Application

34. The Minister met the first part of the test.
35. The Minister submits that a review of the Decision and the Record of Decision demonstrates that the statutory requirements and principles set out in the Act and Regulations and sound planning principles were considered and applied during the Minister's assessment of the Applications.
36. The Decision was not overly broad or arbitrary and was grounded in the principles of natural justice.

The Subject Application

37. The Subject Application was made on the form prescribed by the Minister and included the information listed in section 14 of the Regulations. Pursuant to subsection 27(2) of the Regulations, a plan of subdivision drawn accurately to scale was submitted in lieu of a certified survey plan.

Other Permits and Approvals

38. Pursuant to section 5 of the Regulations, Senior Development Officer, Dean Lewis ("Mr. Lewis"), engaged in substantial correspondence with other Government Departments and Sections to ensure that all necessary approvals relating to the Subject Properties had been obtained, as appropriate, prior to rendering the Decision. In doing so, it was appropriate for Mr. Lewis to rely upon the regulatory determinations of those Government Departments and Sections within their respective areas of responsibility.
39. First, on March 25, 2026, pursuant to subsection 9(1) of the *Environmental Protection Act*, RSPEI 1988, Cap E-9 ("EPA"), and based on the review of the Environmental Impact Assessment, the Minister granted approval to the Developer to proceed with the proposed undertaking, specifically the construction and operation of a 12-hole golf course located on the Subject Properties, subject to certain conditions in accordance with subsection 28(d) of the EPA (the "Environmental Approval").¹²
40. Pursuant to condition #2 of the Environmental Approval, the Developer was required to submit for approval an Environmental Management Plan by June 1, 2026. The

¹² Minister's Record, Tab 6.

Environmental Management Plan was submitted to the Environmental Land Management Section on April 27, 2026, and approved on or around May 28, 2026.

41. For greater certainty, the Minister's Environmental Approval, and related approvals, are not subject to the herein appeal.
42. Second, on May 6, 2026, the Minister of Transportation, Infrastructure and Energy approved (i) the closure of the portion of the Old Queens Road, being 1.7 acres, that crosses the Subject Properties and (ii) the conveyance of said 1.7 acres to the Developer, subject to Executive Council approval. On May 27, 2026, in EC2026-629, Executive Council granted permission to the Developer to acquire a land holding of approximately 1.7 acres from the Government as represented by the Minister of Transportation, Infrastructure and Energy.¹³
43. Third, on May 21, 2025, Provincial Fire Marshal, Dave Rossiter, confirmed that he had no comments on the change of use proposal.¹⁴
44. Fourth, the Developer received Executive Council approval, EC 2025-1023 and EC 2025-229, pursuant to the *Prince Edward Island Lands Protection Act*, RSPEI 1988, Cap L-5, and *Land Identification Regulations*, PEI Reg EC606/95, for the purchase of the relevant properties.¹⁵
45. Further, Mr. Lewis sought and relied upon planning comments from Mr. O'Hara as set out in the Planning Report.

Notice to Surrounding Property Owners

46. Pursuant to the Regulations, it is within the Minister's discretion to hold a public meeting regarding a proposed subdivision and to consider written submissions from owners of a lot within 100 metres of the lot to which the application applies.
47. In light of the nature of the applications, the Minister provided notice to owners of a lot within 100 metres of the Subject Properties by letter dated October 10, 2025 (the "Letter"). The Letter (i) provided notice of a public information session on October 29, 2025, in conjunction with the Environmental Impact Assessment process, and (ii) solicited neighbouring property owners' comments or written submissions regarding the proposed development. The Letter was mailed by regular mail on October 10, 2025, to the identified neighbouring property owners.¹⁶

¹³ Minister's Record, Tabs 8L and 11K.

¹⁴ Minister's Record, Tab 8B.

¹⁵ Minister's Record, Tab 11J.

¹⁶ Minister's Record, Tabs 11E and 11F.

48. The public information session proceeded as scheduled on October 29, 2025, and was attended by both Mr. Lewis and Mr. O'Hara on behalf of the Land Division. The Appellants also attended the session.¹⁷
49. In processing the applications, Mr. Lewis and Mr. O'Hara considered the comments and written submissions, in so far as they related to matters within their area of responsibility, received from neighbouring property owners within 100 metres of the Subject Properties. This included those submitted by the Appellants.
50. With respect to paragraph 13 of the Notice of Appeal, the Minister has no knowledge of when the Appellants received the Letter. In any event, any issue concerning the timing of receipt did not result in procedural unfairness or prejudice to the Appellants. The Appellants attended the public information session, were provided an opportunity to raise their concerns, and all comments and submissions received from the Appellants prior to the issuance of the Decision were considered by Mr. Lewis and Mr. O'Hara. Accordingly, the Appellants were able to meaningfully participate in the process, and no prejudice arose.¹⁸

The Decision

51. The Decision also satisfied the requirements of procedural fairness by clearly identifying the decision, the reasons for the decision, the conditions attaching to the permit, and the Appellants' right of appeal.
52. The Minister therefore submits that the first part of the test is satisfied. The Decision and the Planning Report demonstrate that the Minister discharged the duty of fairness in rendering the Decision in respect of the Applications, including complying with the Act and the Regulations, as well as seeking and applying advice from a land use planning professional.

Step 2: Planning Principles

53. The Decision also meets the second part of the test in that it is supported by objective and reliable evidence from a land use planner, ensuring that the Decision was made in accordance with the Act, the Regulations, as well as has merit based on sound planning principles.

Sound Planning Principles

54. The Minister, again, highlights the Commission's findings in *Stringer* that sound planning principles are a guard against arbitrary decision making. The Commission stated:

¹⁷ Minister's Record, Tab 11G.

¹⁸ *Dorgan et al v Town of Tignish*, Order LA25-07 at para 27 ("*Dorgan*").

*[64] Sound planning principles require regulatory compliance but go beyond merely insuring such compliance and require discretion to be exercised in a principled and informed manner. Sound planning principles require the decision maker to take into consideration the broader implications of their decisions. In order to ensure that sound planning principles have been followed in anomalous applications a professional land use planner must be consulted.*¹⁹

55. The Commission has previously commented that sound planning must be a common feature of development throughout Prince Edward Island.²⁰ In determining whether a subdivision proposal should go forward, the Minister must make an examination “beyond the strict conformity with the Regulations and must consider sound planning principles”.²¹
56. The Minister acknowledges that the consideration of sound planning principles, beyond strict conformity with the Act and Regulations, is an inherently discretionary exercise, which in applications such as this must be exercised by a well-trained professional.²²
57. As such, to ensure that the Decision had merit based on sound planning principles and any discretion was exercised in a principled and informed manner, the Minister requested that Mr. O’Hara provide planning comments.
58. As a result of Mr. O’Hara’s experience and memberships, including being a Registered Professional Planner and Member of the Canadian Institute of Planners, the Minister submits that Mr. O’Hara is a professional land use planner who weighed and balanced the important considerations associated with sound planning principles in rendering the Planning Report.
59. The Planning Report was authored by Mr. O’Hara following site visits on June 5, 2025, and May 20, 2026, reviewing the Development Control Section’s file, as well as consulting with different Government Departments and Sections and neighbouring property owners, both by email and in person.
60. The analysis performed by Mr. O’Hara included considering whether the Developer’s proposal to consolidate the Subject Properties and change of use to accommodate the development of a 12-hole links-style golf course would:
 - (i) Align with the Act, as guided by the matters of provincial interest at section 2.1 of the Act; the Regulations; and land use policy from a planning perspective; and
 - (ii) Align with sound planning principles.

¹⁹ *Stringer* at para 64.

²⁰ *Ibid.*

²¹ *Ibid* at para 58.

²² See: *Pine Cone Developments Inc v City of Charlottetown*, Order LA17-08 at para 48; *New Homes Plus Inc v City of Charlottetown*, Order No LA23-03 (“*New Homes*”) at para 60; *Aftab* at para 42.

61. Based on the planning analysis performed by Mr. O'Hara, he concluded that the application ought to be approved with conditions, including, but not limited to:
- (i) Execution of a comprehensive Development Agreement with the Province that legally binds the proponent to the full implementation, monitoring, and adaptive management of the approved Environmental Management Plan;
 - (ii) Completion and approval of all outstanding permits prior to the commencement of construction; and
 - (iii) Provision of appropriate financial security for environmental performance, erosion mitigation, and decommissioning.
62. In reliance on the planning conclusions and recommendations contained in the Planning Report, the Minister approved the Subject Application. The Minister would have made a substantive error had they based the Decision on considerations other than sound planning principles.
63. At paragraph 42 of Order LA18-02, the Commission found:
- [w]hen it comes to developments, assertions or speculations from neighbours are not sufficient to overcome objective and reliable evidence. While consultation with – and input from – the public is an important element of the planning process it cannot be construed as a veto on the development of properties owned by others.*²³
64. In Order LA23-03, the City of Charlottetown ("City") decided to reject a rezoning request by the appellant contrary to the City's planning staff's professional recommendation. The Commission reiterated the need for objective decision-making with reliance on assessments, opinions and reports of trained professionals, as opposed to the hue and cry of neighbours or politicians. Ultimately, the Commission was satisfied that the City's Council made "a substantive error when it based its decision on considerations other than sound planning principles."²⁴
65. More recently in Order LA25-07, the Commission denied the appellants' appeal as the decision was supported by objective and reliable evidence from a land use planning professional, notwithstanding the Commission also appreciated and understood the appellants' expressed concerns in relation to the subject development.²⁵

²³ *Queens County Condominium Corporation No 40 v City of Charlottetown*, Order LA18-02 at para 42.

²⁴ *New Homes* at paras 60 and 62.

²⁵ *Dorgan* at para 51.

Jurisdiction

66. The Commission is an administrative tribunal, which is a creature of statute and without inherent jurisdiction. It cannot expand its jurisdiction beyond what the legislation provides.
67. Pursuant to subsection 28(1)(c) and (d) of the Act, the Minister readily acknowledges that the Commission has jurisdiction to hear an appeal of a decision of the Minister made in respect of an application for a subdivision permit or approval of a change of use.
68. The Commission's jurisdiction to hear and decide issues on an appeal of a subdivision and/or change of use approval include: (i) the consideration of whether the Minister followed the proper process and procedure as required by the Act and the Regulations; and (ii) the consideration of whether the decision made by the Minister is based on sound planning principles having regard to the principles of land use planning, the Act, and the Regulations. As set out herein, the Minister submits that it properly issued the permit subject to the Appeal.
69. The Minister, however, raises the question of whether the Commission has the jurisdiction to hear and determine certain issues raised by the Appellants, as well as grant the requested relief, as the Minister submits the issues raised by the Appellants are, at least in part, grounded in nuisance and enforcement.

Nuisance

70. On review of the record as a whole, including the Notice of Appeal, certain potential claims raised by the Appellants are grounded in nuisance.
71. First, paragraph 8 of the Notice of Appeal states that "The reasonably apprehended effects include errant golf balls; intrusive play, maintenance pump, vehicle and construction noise; early-morning and evening disturbance...".
72. Second, paragraph 23 of the Notice of Appeal states that:

Noise and operational compatibility. *The Minister failed to obtain or assess competent evidence concerning construction noise, impulsive golf-ball impact noise, player noise, mowing, irrigation pumps, maintenance activity vehicles, deliveries, parking and early-morning or evening operations. The Minister further failed to establish enforceable limits concerning hours, equipment routing, screening and other mitigation necessary to protect the reasonable enjoyment of adjoining residential and home-work uses.*

73. In similar circumstances, the Commission has held that nuisance, including dust, odour, vibration, traffic, and hours of operation, and the relief from it are matters that must be pursued in the Supreme Court of Prince Edward Island with the Commission not being

assigned the statutory jurisdiction to hear and decide these issues. Otherwise, an abuse of process may result.²⁶

Enforcement

74. In the Notice of Appeal, the Appellants also refer to issues of the Minister's enforcement and compliance of activities undertaken by the Developer on the Subject Properties.

75. At paragraph 31 of the Notice of Appeal, the Appellants allege:

Prior site work and compliance history. *The Appellants observed significant cutting or clearing, excavation, grading and sand importation or stockpiling beginning around March 2025, winter logging on land later associated with the revised proposal, and renewed clearing, excavation, grading and sand importation in spring 2026. The Appellants do not allege that every observed activity was unauthorized. They allege that the Minister failed to obtain and consider the complete inspection, stop-work, enforcement and compliance history, and to determine whether site conditions, application information and proposed mitigation accurately reflected work already undertaken.*

76. Notwithstanding the Minister denies these allegations, the Minister respectfully submits that enforcement and compliance matters fall outside of the Commission's jurisdiction.

77. In Order LA 22-03 ("MacKay"), the appellant filed a notice of appeal seeking to challenge a decision by the Minister of Agriculture and Land, as it then was, to approve a change of use. The appellant owned a home that was located approximately 150 feet away from the property in question.

78. In *MacKay*, the record before the Commission raised the preliminary legal issue as to the scope of the Commission's jurisdiction. The Commission acknowledged in this decision that it does not have inherent jurisdiction, rather its jurisdiction is statutory.

79. The Commission, in relying on previous decisions, upheld that it does not have jurisdiction over matters of enforcement with enforcement falling within the discretion of the Minister.²⁷

80. As a result, it is the position of the Minister that enforcement of land use matters falls squarely within the discretion of the Minister and is not appealable to the Commission.

²⁶ See: *Brian R. MacKay v. Minister of Agriculture and Land*, Order LA22-03 at paras 11 to 16 ("MacKay"); *Clare Fagan v. City of Summerside*, Order LA22-09 at paras 10 and 31.

²⁷ *MacKay* at para 12.

Conclusion

81. For the reasons outlined above, the Minister therefore submits that this appeal must be dismissed.
82. Trusting the foregoing is satisfactory; however, if you have questions about these submissions, please do not hesitate to contact us.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,

Handwritten signatures of Christiana Tweedy and Caroline Davidson in blue ink.

Christiana Tweedy and Caroline Davidson
Lawyers for the Minister of Land and Environment