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September 29, 2026

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 #LA26014
Natash Kelly & James Kelly v. Minister of Land and Environment

INTRODUCTION

1. We represent the Minister of Land and Environment (the “**Minister**”) in relation to the above noted appeal filed by Natasha Kelly and James Kelly (the “**Appellants**”) on August 26, 2026 (the “**Appeal**”).
2. The Appeal arises from the Minister’s decision to deny the Appellants’ application to change the use of PID# 924365, located on Allen Road, Southwest Lot 16, PEI (the “**Subject Property**”), from Wood Lot Use only to Residential (Single Unit Dwelling) Use (the “**Application**”).
3. The Minister’s position is that the Subject Property is predominantly wetland and does not contain sufficient developable area to allow for any residential development on the Subject Property to meet the setback requirements established by the *Planning Act*, RSPEI 1988, Cap P-8 (the “**Act**”) and the *Planning Act Subdivision and Development Regulations*, PEI Reg EC693/00 (the “**Regulations**”).

BACKGROUND and DECISION

4. The Subject Property was approved for wood lot use only on August 26, 2003.¹

¹ Appeal Record, Tab 6

5. The Minister received the Application on March 9, 2026.²
6. On April 29, 2026, Shawn MacFarlane, Senior Development Officer (“**MacFarlane**”) with the Department of Land and Environment (the “**Department**”), forwarded the Application to the Department’s Environmental Land Management Division (“**ELM**”) for comment. MacFarlane also forwarded the Application to the Department of Transportation for comment at the same time.³
7. On July 8, 2026, MacFarlane wrote to ELM, requesting an update on its review of the Application.⁴
8. On August 12, 2026, Chad Quigley, Watercourse and Wetland Alteration Technician with ELM (“**Quigley**”), wrote to MacFarlane to advise that, following a review of the Application that included a site visit to the Subject Property on July 14, 2026, and a desktop assessment, ELM had determined that the Subject Property was entirely wetland, aside from infill that had been placed on the Subject Property for a driveway and a pad that had already been constructed. ELM therefore recommended that the Application be denied due to a lack of sufficient developable area.⁵
9. On August 24, 2026, the Minister denied the Application pursuant clauses 3(2)(a), 5(a) and 39(5)(c) of the Regulations (the “**Decision**”). As outlined in the Decision, the denial was issued as the area of the proposed development on the Subject Property is not suitable for residential development due to the presence of wetland. The Minister therefore had no alternative but to deny the Application.

Appeal

10. The Appeal is pursuant to section 28 of the Act.
11. In the Notice of Appeal, the Appellants’ grounds for the Appeal are:

We dispute the extent of the boundaries of the wetland and the conclusion that no compliant residential building envelope exists.

We also dispute whether the assessment adequately established the wetland boundary and available developable area.

² Appeal Record, Tab 2

³ Appeal Record, Tab 12, page 72

⁴ Appeal Record, Tab 12, page 66

⁵ Appeal Record, Tab 11

12. The Appellants ask that the Commission allow the appeal, overturn the Decision and approve the Appellants' requested change of use subject to any conditions the Commission considers appropriate. Alternatively, the Appellants ask that this matter be returned to the Minister for reconsideration following a proper determination of the wetland boundary and available developable are on the Subject Property.
13. The Minister's response to the Appeal is outlined below. Should the Appellants expand on, provide further explanation for, and/or otherwise provide submissions on the grounds of appeal set out above, the Minister reserves the right to provide a further reply thereto.

Legislation

14. Clause 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and the Regulations.
15. The Regulations apply to all areas of the province, except those municipalities with official plans and bylaws.⁶ The Subject Property is located in 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.
16. Clauses 1(f.3), 1(g) and 1(x) of the Regulations define "*detrimental impact*", "*development*" and "*wetland*", respectively, as follows:

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

- (i) real property value;*
- (ii) competition with existing businesses;*
- (iii) viewscales; or*
- (iv) development approved pursuant to subsection 9(1) of the Environmental Protection Act;*

...

(g) "development" means

- (i) site alteration, including but not limited to*
 - (A) altering the grade of the land,*
 - (B) removing vegetation from the land,*
 - (C) excavating the land,*
 - (D) depositing or stockpiling soil or other material on the land, and*
 - (E) establishing a parking lot,*

⁶ *Subdivision and Development Regulations*, PEI Reg EC693/00, <https://canlii.ca/t/56knk>, at subsection 2(1)

- (ii) locating, placing, erecting, constructing, altering, repairing, removing, relocating, replacing, adding to or demolishing structures or buildings in, under, on or over the land,
- (iii) placing temporary or permanent mobile uses or structures in, under, on or over the land, or
- (iv) changing the use or intensity of use of a parcel of land or the use, intensity of use or size of a structure or building;

...
 (x) “**wetland**” means a wetland as defined in the *Environmental Protection Act Watercourse and Wetland Protection Regulations*;⁷

17. Clauses 3(2)(a) and (d), 5(a) and 39(5)(c) of the Regulations state:

Idem, development permits

3(2) No development permit shall be issued where a proposed building, structure, or its alteration, repair, location, or use or change of use would

- (a) not conform to these regulations or any other regulations made pursuant to the Act;

...
 (d) have a detrimental impact; or

5. Other approvals required

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;

Setback from beach, sand dune, wetland or watercourse

(5) The nearest exterior portion of a building or structure shall be located no closer than

- ...
 (c) 75 feet (22.9 metres) to the inland boundary of a wetland or watercourse.⁸

18. Clauses 1(1)(gg) and (hh) of the *Environmental Protection Act Watercourse and Wetland Protection Regulations*, PEI Reg EC720/08 state:

(gg) “**wetland**” means

- (i) an area which contains hydric soil, aquatic or water-tolerant vegetation, and may or may not contain water, and includes any water therein and everything up to and including the wetland boundary, and
- (ii) without limiting the generality of the foregoing, includes any area identified in the *Prince Edward Island Wetland Inventory* as open water, deep marsh, shallow marsh, salt marsh, seasonally flooded flats, brackish marsh, a shrub swamp, a wooded swamp, a bog or a meadow;

...

⁷ *Ibis*, at clauses 1(f.3), 1(g) and 1(x)

⁸ *Ibid*, at clauses 3(2)(a) and (d), 5(a) and 39(5)(c)

(hh) “**wetland boundary**” means where the vegetation in a wetland changes from aquatic or water-tolerant vegetation to terrestrial vegetation or water-intolerant vegetation;⁹

19. This is the legislative framework through which the Minister received and considered the Application.

The Test

20. In Order LA17-06 (“**Stringer**”),¹⁰ the Commission established the applicable test for reviewing Ministerial decisions made under the Act and the Regulations (the “**Test**”). The 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.*¹¹

Test Application

21. In this matter, the Minister followed the proper process as set out by law and applied sound planning principles. The Decision therefore requires deference.

Part 1 of the Test – Processing of the Application

22. The Minister met the first part of the test. The Decision and supporting evidence demonstrate that the Minister followed the proper process and procedure, and the applicable legislation. The Decision was not overly broad or arbitrary and was grounded in the principles of natural justice.
23. Clauses 3(2)(a) and (d) of the Regulations, respectively, prohibit the issuance of a development permit where the proposed building, structure, or its alteration, repair, location, or use or change of use would not conform to the Regulations or would have a detrimental impact.

⁹ *Watercourse and Wetland Protection Regulations*, PEI Reg EC720/08, <https://canlii.ca/t/555h6>, at clauses 1(1)(gg) and (hh)

¹⁰ *Stringer (Re)*, 2017 CanLII 153317 (PE IRAC), <https://canlii.ca/t/jswkl>, at para. (20)

¹¹ *Parry Aftab and Allan McCullough v. Minister of Housing, Land and Communities*, 2025 PEIRAC 16 (CanLII), <https://canlii.ca/t/kbjqk>, at para 27

24. Further, clause 5(a) of the Regulations prohibits giving an approval until permits or approvals have been obtained as required in accordance with the *Environmental Protection Act*, RSPEI 1988, c E-9.
25. In this matter, after reviewing the Subject Property's status on the Environment Web Mapping Application and noting that the Subject Property appeared to have poorly drained soils,¹² MacFarlane sent the Application to ELM for review on April 29, 2026.
26. ELM confirmed, on August 12, 2026, that the Subject Property was primarily wetland. In an Interoffice Memorandum of that date from Quigley to MacFarlane, Quigley stated, in part, that:
- Our review and site visit on July 14, 2026, confirm the presence of wetland and insufficient developable area exists outside the buffer zone and additional setbacks. The majority of this site, excluding the driveway access and pad was confirmed to be wetland. This application should be denied due to the lack of developable area.*¹³
27. It was reasonable for MacFarlane to rely on ELM's determination that the Subject Property did not appear to have sufficient developable area outside of the wetland to allow for any residential single unit dwelling development to occur, and to deny the Application on this basis.

Part 2 of the Test – Sound Planning Principles

28. The Minister also met the second part of the test as the Decision is supported by objective and reliable evidence, and is based on the Act, the Regulations, and sound planning principles. The Commission states in *Stringer* that “*sound planning principles require regulatory compliance*”.¹⁴
29. Clause 39(5)(c) of the Regulations prohibits the placement of a building or structure within 75 feet (22.9 metres) of a wetland's boundary. As the Subject Property is almost entirely wetland, there is insufficient developable area on the Subject Property to allow for any residential development on the Subject Property to meet this regulatory requirement.
30. Given the Application's lack of regulatory compliance, the Decision satisfies both steps in the test.

¹² Appeal Record, Tab 7, page 25

¹³ Appeal Record, Tab 11

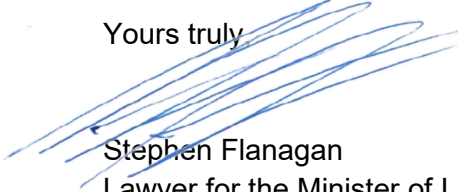
¹⁴ *Stringer*, supra note 10, at para. 64

Conclusion

31. For the reasons outlined above, the Minister submits that the Appeal must be dismissed.
32. 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



Stephen Flanagan
Lawyer for the Minister of Land and Environment