

BEFORE THE ISLAND REGULATORY AND APPEALS COMMISSION

IN THE MATTER OF an appeal pursuant to section 28 of the ***Planning Act***, by Natasha Kelly and James Kelly, against the August 24, 2026 decision of the Minister of Land and Environment denying Change of Use Application CU-2026-012 for PID 924365, Allen Road, Southwest Lot 16, requesting a change from Wood Lot Use only to Residential (Single Unit Dwelling) Use.

***APPELLANTS' RESPONSE TO THE APPEAL RECORD
AND THE MINISTER'S SUBMISSIONS***

Natasha Kelly and James Kelly
Appellants

Minister of Land and Environment
Respondent

Date submitted: October 10, 2026

APPELLANTS' RESPONSE TO THE APPEAL RECORD AND THE MINISTER'S SUBMISSIONS

BETWEEN:

NATASHA KELLY AND JAMES KELLY (Appellants)

-and-

MINISTER OF LAND AND ENVIRONMENT (Respondent)

Introduction

1. We, Natasha Kelly and James Kelly, submit this response to the Minister's September 29, 2026 submissions and the Appeal Record concerning the denial of Change of Use Application CU-2026-012 for PID 924365.
2. We do not dispute that wetland conditions are present on portions of PID 924365. Our appeal concerns the extent and boundary of that wetland and whether the evidence available when the decision was made adequately established that essentially the entire approximately 10-acre parcel is wetland and that no compliant residential building location exists.
3. The Minister's submissions state that the property is "predominantly wetland" and does not contain sufficient developable area to meet the required setbacks. The Minister relies primarily upon the Environmental Land Management ("ELM") assessment and the August 12, 2026 Interoffice Memorandum from Chad Quigley.
4. After reviewing the complete Appeal Record and obtaining additional information directly from Mr. Quigley, we respectfully submit that the evidence establishes the presence of wetland at locations assessed, but does not adequately establish the wetland boundary or its extent throughout the entire parcel.

The July 14 Assessment

5. The August 12 ELM Interoffice Memorandum states:
"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."¹
The memorandum then recommends denial due to lack of developable area.
6. The Minister's submissions describe the property as entirely, primarily or almost entirely wetland. Mr. Quigley's August 12 covering email also states that the

¹ Minister's Appeal Record, Tab 11, p. 37, Interoffice Memorandum dated August 12, 2026.

property was all wetland except for the infill for the driveway and pad.² Our concern is with the factual foundation for that parcel-wide conclusion and whether the assessment adequately established that no compliant residential building location exists anywhere on PID 924365.

Information Obtained From ELM Following the Decision

7. After receiving the August 24 decision, we contacted Mr. Quigley and requested the documentation underlying the July 14 assessment, including any wetland delineation, mapping, GPS coordinates, field notes, photographs, measurements and other records used to determine the wetland boundary.
8. On September 4, Mr. Quigley advised us that “there was no formal wetland delineation completed.” He explained that the Department instead completes boundary determinations using desktop information followed by a site visit to assess wetland indicators. Mr. Quigley also provided a field data sheet and photographs showing wetland indicators.³
9. On September 11, Mr. Quigley advised us that during his July visit he concluded that the wetland boundary encompassed the whole property except for the driveway and pad and that, because he reached that conclusion, he did not collect GPS points.⁴
10. Mr. Quigley also provided the desktop information used in his assessment, including information regarding poorly drained soils, soil type, contours and depth to water.⁵
11. We recognize that the desktop information, field data sheet and photographs support the presence of wetland conditions. Our concern is how that information, together with the observations made during the site visit, established the wetland’s extent across PID 924365 and supported the conclusion that no compliant residential building location exists.

Scope of the Original Site Assessment

12. Of particular importance, Mr. Quigley clarified the scope of the July 14 assessment in his September 11 email. He stated:

² Minister’s Appeal Record, Tab 11, p. 36, email from Chad Quigley to Shawn MacFarlane dated August 12, 2026.

³ Appellants’ Supporting Appendices, Appendix A, p. 4, email from Chad Quigley dated September 4, 2026; Appendix C, pp. 12–13, Wetland Field Data Sheet; Appendix D, p. 15, photographs supplied by ELM.

⁴ Appellants’ Supporting Appendices, Appendix A, p. 6, email from Chad Quigley dated September 11, 2026.

⁵ Appellants’ Supporting Appendices, Appendix A, p. 6, email from Chad Quigley dated September 11, 2026; Appendix E, pp. 17–18, desktop mapping supplied by ELM.

“The assessment of the property was focused on the area slated for development, although an observation was conducted to ensure the conditions were consistent with the remainder of the property.”⁶

He then offered to provide “a more intensive look at the remainder of the property.”

13. Mr. Quigley also stated that his next assessment would focus on the northern property boundary “to try and determine if any upland is present in this area.”⁷
14. We respectfully submit that these statements are relevant to the adequacy of the information available when the August 24 decision was made. At that time, the Department had concluded that there was insufficient developable area anywhere on the parcel. We acknowledge that Mr. Quigley observed the remainder of the property for consistency. However, his subsequent explanation that the assessment focused on the proposed development area, together with his offer to investigate the remainder more intensively for possible upland, supports our concern about whether the original assessment adequately established the absence of a compliant residential building location across the entire parcel.

Evidence Contained in the Appeal Record

15. The Appeal Record includes the August 12 ELM Interoffice Memorandum, but we have not identified within the Record a mapped field-determined wetland boundary, GPS coordinates from the July 14 assessment, mapped assessment locations, measurements from an established wetland boundary, or a setback overlay demonstrating that no compliant residential building location exists anywhere on PID 924365.
16. We do not suggest that a formal wetland delineation, GPS points or a particular form of mapping is necessarily required in every assessment. Our concern is whether the observations and desktop information relied upon adequately supported the conclusion that no compliant residential building location exists anywhere on PID 924365.
17. The August 12 memorandum provides ELM's conclusion but does not identify where on the approximately 10-acre parcel the observations supporting the parcel-wide wetland determination were made, nor does it depict an inland wetland boundary from which the required setback could be measured.

⁶ Appellants' Supporting Appendices, Appendix A, p. 6, email from Chad Quigley dated September 11, 2026.

⁷ Appellants' Supporting Appendices, Appendix A, p. 6, email from Chad Quigley dated September 11, 2026.

18. The Minister relies upon subsection 39(5)(c), which requires the nearest exterior portion of a building or structure to be at least 75 feet (22.9 metres) from the inland boundary of a wetland or watercourse.⁸
19. The definition of “wetland boundary” quoted in the Minister’s own submissions describes the boundary as where the vegetation in a wetland changes from aquatic or water-tolerant vegetation to terrestrial vegetation or water-intolerant vegetation.⁹
20. We therefore respectfully submit that determining whether the required 75-foot setback can be achieved necessarily requires sufficient information about the location of the relevant inland wetland boundary.

Response to the Minister’s Submissions

21. At paragraph 27, the Minister submits that it was reasonable for Mr. MacFarlane to rely upon ELM’s determination that the property did not appear to have sufficient developable area.
22. We do not suggest that a Development Officer cannot rely upon the expertise of ELM. Our concern is with the factual foundation underlying the particular ELM conclusion relied upon.
23. The information provided by Mr. Quigley establishes that no formal wetland delineation was performed, no GPS points were collected during the original assessment, and the July 14 assessment was focused on the proposed development area, with an observation of the remainder for consistency. These circumstances do not, by themselves, establish that the assessment was inadequate. They are relevant to determining whether the assessment sufficiently supported its parcel-wide conclusion.
24. The Minister further submits at paragraph 28 that the decision was supported by “objective and reliable evidence.” We do not dispute the evidence demonstrating wetland indicators where observations were made. We respectfully dispute whether that evidence was sufficient to establish the parcel-wide extent and boundary necessary to conclude that no compliant residential building envelope exists anywhere on the property.
25. Paragraph 29 of the Minister’s submissions states that because the property is “almost entirely wetland,” there is insufficient developable area to satisfy the 75-foot setback.
26. However, the existence of the 75-foot setback does not itself establish that no compliant location exists. That conclusion depends upon sufficient evidence of

⁸ Minister’s Response Submissions dated September 29, 2026, paragraph 17.

⁹ Minister’s Response Submissions dated September 29, 2026, paragraph 18.

the wetland's extent and its relationship to any remaining area that might accommodate a dwelling.

27. Mr. Quigley's subsequent statement that a more intensive assessment of the remainder of the property could be undertaken, including specifically investigating whether upland exists along the northern property boundary, supports our concern that questions remained regarding the extent of the wetland and the availability of upland after the decision had already been made.
28. The Minister also relies upon clause 5(a), concerning environmental assessment or environmental impact statement approvals where required.¹⁰ We recognize that any approval required under that provision must be obtained. However, the Minister's submissions do not identify a particular required approval that was outstanding or explain whether this is a separate basis for refusing the application, apart from the disputed wetland and developable-area determination.
29. The Minister further refers to detrimental impact under clause 3(2)(d).¹¹ We do not seek approval for development that would cause a prohibited detrimental impact. To the extent that this argument depends upon the same conclusion concerning wetland extent and the absence of a compliant residential building location, our concern regarding the factual foundation for that conclusion remains.

Regulatory Compliance and Location of a Future Dwelling

30. At paragraph 30, the Minister states:

"Given the Application's lack of regulatory compliance, the Decision satisfies both steps in the test."
31. We respectfully submit that, to the extent this conclusion rests upon the determination that no compliant building location exists anywhere on PID 924365, it depends upon the very factual issue in dispute in this appeal.
32. We are not seeking permission to construct a dwelling within a wetland, within a protected buffer, or within the required 75-foot setback. We are also not asking for an exemption from applicable environmental protections or setback requirements.
33. We are willing to locate a future dwelling anywhere on the approximately 10-acre parcel where residential development can lawfully occur.
34. If another portion of PID 924365 contains sufficient upland area to accommodate a dwelling while complying with all applicable wetland, buffer and setback requirements, we are willing to relocate the proposed dwelling to that area, subject to any necessary revised plans, assessments and approvals.

¹⁰ Minister's Response Submissions dated September 29, 2026, paragraphs 17 and 24.

¹¹ Minister's Response Submissions dated September 29, 2026, paragraphs 17 and 23.

35. We recognize that our willingness to relocate does not establish that a compliant location exists. It clarifies that the relief we seek is not limited to placing the dwelling in the precise location shown on the original application sketch.

Public Mapping

36. Before purchasing PID 924365, we reviewed the Province's PEI Information Mapping system as part of our efforts to identify potential development restrictions.
37. We recognize, as Mr. Quigley subsequently explained, that the public mapping is a screening tool and does not identify all unmapped wetlands. We are not asking the Commission to treat the public mapping as proof that no wetland exists on the property.¹²
38. We raise the mapping as context. The Potential Development Restrictions shown on the public mapping did not indicate that essentially the entire approximately 10-acre parcel was potentially restricted due to suspected wetland conditions.¹³ This significant difference between the public information available to us and the subsequent parcel-wide determination was one of the reasons we sought further information regarding how the wetland boundary and extent had been established.

Relief Requested

39. We respectfully request that the Commission allow the appeal, overturn the Minister's August 24, 2026 decision and approve the requested change of use of PID 924365 from Wood Lot Use only to Residential (Single Unit Dwelling) Use, subject to compliance with all applicable environmental protections, wetland boundaries, buffers and setback requirements.
40. Alternatively, if the Commission is not prepared to approve the requested change of use on the present record, we respectfully request that the August 24 decision be overturned and the matter returned to the Minister for reconsideration following an adequate determination of the wetland boundary and available developable area across PID 924365.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

James Kelly



Natasha Kelly



¹² Appellants' Supporting Appendices, Appendix A, p. 4, email from Chad Quigley dated September 4, 2026.

¹³ Appellants' Supporting Appendices, Appendix B, p. 10, provincial mapping screenshots attached to the August 24, 2026 email.