Prince Edward Island

Justice and Public Safety

Legal Services
PO Box 2000
Charlottetown PE
Canada CIA 7N8

Île-du-Prince-Édouard

Justice et Sécurité publique

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

November 5, 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 #LA26015
PID# 422386, Wildcat Road, Wild Harbour, PEI (the "Subject Property")
Tony Sauer v. Minister of Land and Environment
Our File: LS28702

INTRODUCTION

1. We represent the Minister of Land and Environment (the "**Minister**") in relation to the above noted appeal filed by Anthony Sauer (the "**Appellant**") on October 7, 2026 (the "**Appeal**").

2. The Appeal arises from the Minister's decision (the "**Decision**") to deny the Appellant's application (the "**Application**") to subdivide the Subject Property into four lots (the "**Proposed Lots**").

3. The Minister's position is as follows:

   (a) All lots created under the *Subdivision and Development Regulations*, PEI Reg EC693/00 (the "**S & D Regulations**) must have vehicular access to a public or private road.[1] In the Application, the Appellant intended to provide vehicular access for the Proposed Lots through an existing right-of-way onto Wildcat Road, which is a Class 2 seasonal highway.[2]

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[1] *Subdivision and Development Regulations*, PEI Reg EC693/00, https://canlii.ca/t/56knk, at section 24
[2] *Highway Access Regulations*, PEI Reg EC580/95, https://canlii.ca/t/56w96, at subsection 16(2) and item (470) of Schedule D-2

(b) An entrance way permit issued under the *Highway Access Regulations*, PEI Reg EC580/95 ("**HAR**") would be required for this.[3] Where an entrance way permit is required, the Minister cannot approve an application under the S & D Regulations until that entrance way permit has been obtained.[4]

(c) The only circumstances in which an entrance way permit can be issued for access onto a Class 2 seasonal highway are listed in subsection 33(2) of the HAR – none apply here.[5]

(d) As proper vehicular access to Wildcat Road is not available for the Proposed Lots, the Minister had no choice but to deny the Application.

BACKGROUND and DECISION

4. The Minister received the Application on April 29, 2026.[6]

5. After completing a preliminary review of the Application, Gerald McMillan ("**McMillan**"), Property Development Officer with the Development Control division of the Department of Land and Environment (the "**Department**"), forwarded the Application to the Department of Transportation and Infrastructure ("**DTI**"), and to the Department's Environmental Land Management ("**ELM**") and Coastal Properties divisions for input.[7]

6. On July 29, 2026, McMillan received a response from Ahmad Bhatti, Watershed Hydrogeologist with the Department.[8]

7. On September 16, 2026, McMillan received a response from Brett A. Wallace, Traffic Operations Engineer with DTI, advising that, pursuant to subsection 33(2) of the HAR, further subdivision along the Wildcat Road would not be permitted.[9]

8. On September 17, 2026, the Minister issued the Decision, denying the Application.[10]

Appeal

9. The Appeal is pursuant to section 28 of the *Planning Act*, RSPEI 1988, c P-8 (the "**Act**").[11]

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[3] *Ibid*, at section 3
[4] *Subdivision and Development Regulations*, supra note 1, at clause 5(d)
[5] *Highway Access Regulations*, supra note 2, at subsection 33(2)
[6] Record, at Tab 3
[7] Record, Tab 15, at pages 50 to 52
[8] Record, Tab 15, page 54
[9] Record, Tab 15, pages 47 to 49
[10] Record, Tab 2
[11] *Planning Act*, RSPEI 1988, c P-8, https://canlii.ca/t/56vwf, at section 28

10. In the Notice of Appeal, the Appellant's grounds for the Appeal are that: "*Property #422386 is surrounded by subdivisions similar to what has been proposed for property #422386 so not sure what makes #422386 different*."[12]

11. The Minister's response to the Appeal is outlined below. Should the Appellant 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

12. Clause 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and the Regulations.[13]

13. The S & D Regulations apply to all areas of the province, except those municipalities with official plans and bylaws.[14] 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.

14. Section 24 and cluse 5(d) of the S & D Regulations, respectively, state:

> ***24. Access***
> *No person shall create a lot which does not have vehicular access to a public road or a private road, or which prevents or eliminates vehicular access from an adjacent parcel to a public road.*
>
> ***5. Other approvals required***
> *No approval shall be given pursuant to these regulations until the following permits or approvals have been obtained as appropriate:*
>
> *...*
> *(d) where, pursuant to the Roads Act, an entrance way permit or approval is required, the required permit or approval has been obtained; and*[15]

15. Wildcat Road has been designated as a Class 2 seasonal highway [see subsection 16(2) and item (470) of Schedule D-2 of the HAR].[16]

16. Section 3 and subsection 33(2) of the HAR, respectively, state:

> ***3. Entrance ways***
> *No person shall construct or cause a change of use of an entrance way opening onto an arterial highway, limited access arterial highway or a*

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[12] Record, Tab 1
[13] *Planning Act*, supra note 11, at clause 6(c)
[14] *Subdivision and Development Regulations*, supra note 1, at subsection 2(1)
[15] *Ibid*, at section 24 and clause 5(d)
[16] *Highway Access Regulations*, supra note 2

seasonal highway without first having obtained an entrance way permit from the Minister.

Issuing permit – Schedule D-2
(2) The Minister may issue an entrance way permit to authorize placement of a new entrance way or to change the use of an existing entrance way to an existing parcel of land abutting a seasonal highway listed in Schedule D-2 for the purpose of

(a) the cultivation of a natural resource; or
(b) the development of only one single-unit dwelling as defined in the Planning Act Subdivision and Development Regulations (EC693/00).[17]

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

The Test

18. In Order LA17-06 ("***Stringer***"),[18] the Commission established the applicable test for reviewing Ministerial decisions made under the Act and the S & D 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.[19]

Test Application

19. 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

20. 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.

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[17] *Ibid*, at section 3 and subsection 33(2)
[18] *Stringer (Re)*, 2017 CanLII 153317 (PE IRAC), https://canlii.ca/t/jswkl, at para. (20)
[19] *Parry Aftab and Allan McCullough v. Minister of Housing, Land and Communities*, 2025 PEIRAC 16 (CanLII), https://canlii.ca/t/kbjqk, at para 27

21. After completing a preliminary review of the Application, McMillan sent the Application to DTI for comment. In response, on September 16, 2026, DTI confirmed that further subdivision along the Wildcat Road would not be permitted pursuant to subsection 33(2) of the HAR.[20]

22. Recognizing that the Minister is bound by clause 5(d) of the S & D Regulations, McMillan informed the Appellant, on September 17, 2026, that the Application was denied on this basis.[21]

Part 2 of the Test – Sound Planning Principles

23. The Minister also met the second part of the Test. The Decision is supported by objective and reliable evidence, and is based on the Act, the S & D Regulations, and sound planning principles. The Commission states in *Stringer* that "*sound planning principles require regulatory compliance*".[22]

24. As set out above in paragraph 3, before the Minister could approve the Application, the Appellant would need to obtain an entrance way permit under the HAR, to provide vehicular access to Wildcat Road for the Proposed Lots.

25. Pursuant to subsection 33(2) of the HAR, there are only two circumstances in which an entrance way permit could be issued to authorize the placement of a new entrance way onto Wildcat Road: (a) where the purpose of the entrance way is for the cultivation of a natural resource, or (b) where the purpose of the entrance way is for the development of "*only one*" single-unit dwelling.

26. What the Appellant proposed in the Application fits into neither of these categories. There are *four* Proposed Lots [ruling out (b)], and their proposed use is residential, not for the cultivation of a natural resource [ruling out (a)].

27. Given that what the Appellant proposed in the Application would be prohibited under the HAR and the S & D Regulations, the Decision was based on sound planning principles.

Conclusion

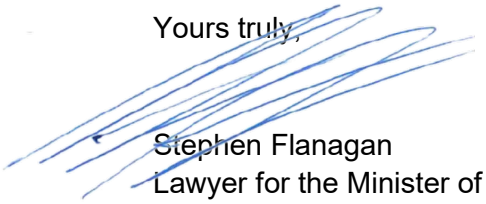
28. For the reasons outlined above, the Minister submits that the Appeal must be dismissed.

[20] Record, Tab 15, pages 47 to 49
[21] Record, Tab 15, page 45
[22] *Stringer* at para 64.

29. 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