



## Prince Edward Island

Justice and  
Public Safety

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## Île-du-Prince-Édouard

Justice et  
Sécurité publique

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September 17, 2025

**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 #LA25013**  
**Donald and Carol Doucette v. Minister of Housing, Land and Communities**  
**Our File: LS 27664**

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1. We represent the Minister of Housing, Land and Communities (the “Minister”) in relation to the above noted appeal filed by Donald and Carol Doucette (the “Appellants”) on August 20, 2025 (the “Appeal”). The Appeal arises from the Minister denying the Appellants’ development permit application to construct a detached two-car garage on PID# 610824 located at 133 Grand Pere Point Road, Rustico, Queens County (the “Subject Property”) (the “Application”). The Subject Property abuts a wetland.
2. The Minister’s position is that the proposed location for the detached garage is located within the buffer zone on the Subject Property. Given the location of the structure being within the buffer zone, the Minister’s decision to deny the Application was in accordance with the *Planning Act*, RSPEI 1988, Cap P-8 (the “Act”) and the *Planning Act Subdivision and Development Regulations*, PEI Reg EC693/00 (as amended) (the “Regulations”).

### **Background and Decision**

3. On June 18, 2025, the Minister received the Application. The Appellants paid the required fees for the Application on July 10, 2025.
4. On completing a preliminary review of the Application, the Minister identified that the Subject Property has a wetland and, as a result, requested further information from the Department of Environment, Energy and Climate Action (“Department of EECA”).
5. On July 15, 2025, Anita Masters, Watercourse Alteration Technician, Environmental Land Management Section, Department of EECA (“Ms. Masters”), confirmed that the proposed structure would be located within the 15 metre buffer zone/wetland on the Subject

Property. As no development is permitted in a watercourse, wetland or buffer zone without a Watercourse, Wetland and Buffer Zone Activity Permit, the Department of EECA recommended that the Application be denied.

6. Pursuant to subsection 16(4) of the Regulations, the requested development permit cannot be granted. Subsection 16(4) states “No person shall undertake any development, including a sewage disposal system, within a required buffer.”
7. On July 31, 2025, the Minister denied the Application pursuant to subsections 3(2)(a), 5(a) and 16(4) of the Regulations (the “Decision”). As outlined in the Decision, the denial was issued as the proposed structure would be located within the buffer zone on the Subject Property, and therefore the Minister had no alternative but to deny the Application.

### **Appeal**

8. The Appeal is pursuant to section 28 of the Act.
9. The Appellants seek the following relief from the Commission:

*The pond does not really exist because the culvert does not do the proper job of containing the sea water from entering and we are not in the buffer zone. Measuring the distance to the culvert is not accurate.*

10. The Minister is providing the Record of the Decision to the Appellants and filing same with the Commission on the same date as the within submissions are dated.
11. The Minister’s response to the Appellants’ appeal is outlined below. Should the Appellants expand on, provide further explanation for, and/or otherwise provide submissions on the grounds of appeal, the Minister reserves the right to provide a further reply thereto.

### **Legislation**

12. Subsection 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and the Regulations.
13. The Regulations apply to all areas of the province, except those municipalities with official plans and bylaws. The Subject Property is located in Rustico, 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.
14. Subsections 1(b.3) and 1(g) of the Regulations defines buffer and development, respectively, as follows:

#### *1. Definitions*

*In these regulations*

...

*(b.3) “buffer” means an area of land which serves to separate two or more different types of land use;*

...

*(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,*

***(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;*

[emphasis added]

15. Subsection 3(2) of the *Regulations* provides:

***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;***

*(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;*

*(d) have a detrimental impact; or*

*(e) result in a fire hazard to the occupants or to neighbouring buildings or structures.*

[emphasis added]

16. In other words, the Minister **must deny** an application that contravenes any one or more of these general requirements.
17. The Application contravenes sections 5(a), 16(4) and 39(5)(c) of the Regulations, which provide:

*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;*

...

*16.*

...

*Development prohibited in buffer*

- (4) No person shall undertake any development, including a sewage disposal system, within a required buffer.*

...

*39.*

...

*Setback from beach, sand dune, wetland or watercourse*

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

*(a) 75 feet (22.9 metres), or 60 times the annual rate of erosion, whichever is greater, to a beach, measured from the top of the bank;*

*(b) 100 feet (30.5 metres) to a migrating primary or secondary sand dune, measured from the inland boundary of the dune;*

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

[emphasis added]

18. The *Watercourse and Wetland Protection Regulations*, PEI Reg EC720/08, also apply to the Application. Subsections 1(1)(e), 1(1)(gg), 1(1)(hh) and section 3, in part, of the *Watercourse and Wetland Protection Regulations*, *supra*, provide as follows:

*1(1)(e) “buffer zone” means the 15-metre-wide area referred to in section 3;*

...

*(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;

...

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

...

### **PART III – BUFFER ZONES**

...

**3 (3) No person shall, without a license or a Buffer Zone Activity Permit, and other than in accordance with the conditions thereof, alter or disturb the ground or soil within 15 metres of a watercourse boundary or a wetland boundary, or cause or permit the alteration or disturbance of the ground or soil, therein, in any manner.**

**(4) No person shall, without a license or a Buffer Zone Activity Permit, and other than in accordance with the conditions thereof, engage in or cause or permit the engaging in any of the following activities within 15 metres of a watercourse boundary or a wetland boundary:**

(a) drain, pump, dredge, excavate, or remove soil, water, mud, sand, gravel, stones, rocks, or aggregate;

(b) dump or infill, or deposit soil, water, mud, sand, gravel, stones, rubbish, litter, rocks, aggregate or material or objects of any kind;

**(c) construct or place, repair or replace, demolish or remove, buildings or structures or obstructions of any kind, including but not limited to bridges, culverts, breakwaters, dams, wharves, docks, slipways, decks, or flood or erosion protection works;**

(d) operate heavy equipment or a motor vehicle, other than

(i) upon a highway,

(ii) upon a private road, right-of-way, or driveway which was approved prior to the enactment of these regulations by the provincial government or a municipal government in a building permit or a subdivision plan, or

(iii) for the conduct of activities directly related to the legal harvesting of a fishery resource, the legal removal of beach material, or the cultivating of an agricultural crop;

**(e) disturb, remove, alter, disrupt or destroy the ground in any manner;**

(f) cut down live trees or live shrubs;

(g) cultivate an agricultural crop;

(h) spray or apply pesticides in any manner.

(5) *The land within 15 metres of a watercourse boundary or a wetland boundary referred to in subsections (3) and (4) shall be known as a buffer zone.*

[emphasis added]

## **Test**

19. In Order LA17-06 ("*Stringer*")<sup>1</sup>, the Commission outlines the applicable test for Ministerial decisions made under the Act and Regulations, namely:
- a. whether the land use planning authority, in this case the Minister, followed the proper process and procedure as required in the Regulations, in the Act and in the law in general, including the principles of natural justice and fairness, in making a decision on an application for a development permit, including a change of use permit; and
  - b. whether the Minister's decisions with respect to the applications for development and the change of use have merit based on sound planning principles within the field of land use planning and as identified in the objects of the Act.

## **Test Application**

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

### *Step 1: Processing of the Application*

21. 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.
22. Subsection 16(4) of the Regulations prohibits development within a required buffer. Subsection 1(b.3) of the Regulations defines buffer as an area of land which serves to separate two or more different types of land use. Subsection 1(g) of the Regulations defines development to include locating, placing, erecting, constructing, altering, repairing, removing, relocating, replacing, adding to or demolishing structures or buildings in, under, on or over the land.
23. Section 3 of the *Watercourse and Wetland Protection Regulations* also prohibits, unless with a license or a Buffer Zone Activity Permit, altering or disturbing the ground or soil, or

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<sup>1</sup> *Stringer (Re), Donna Stringer v Minister of Communities, Land and Environment*, Order LA17-06 at para 52 ("*Stringer*").

constructing or placing, repairing or replacing, demolishing or removing, buildings or structures or obstructions of any kind within 15 metres of a watercourse boundary or a wetland boundary.

24. In this matter, Property Development Officer, Akinkunle Akinbinu ("Mr. Akinbinu"), sent the details of the Application to a Section of the Department of EECA, namely Environmental Land Management. Mr. Akinbinu sought the Environmental Land Management Section's comments on the Application.
25. On July 15, 2025, Ms. Masters confirmed that the Application should be denied as the proposed addition is located within the 15 metre buffer zone of the wetland on the Subject Property.
26. It was reasonable for the Property Development Officer to rely on the Department of EECA's determination that the garage would be located within the buffer zone and corresponding recommendation to deny the Application.
27. The Minister notes that the Appellants have not obtained a license or Buffer Zone Activity Permit under the *Watercourse and Wetland Protection Regulations, supra*.
28. The Minister also submits that a minimum building or structure setback of 75 feet (22.9 metres) is also required from the inland boundary of a wetland or watercourse in accordance with subsection 39(5) of the Regulations. The proposed development would not meet this setback requirement.
29. In direct response to the grounds and relief requested by the Appellants set forth in the Appeal, the Minister states the following:
  - a. The stated purpose of the *Environmental Protection Act*, RSPEI 1988, c E-9, is to manage, protect and enhance the environment.<sup>2</sup> In fulfillment of this purpose, the *Environmental Protection Act, supra*, legislates that, without a license or Buffer Zone Activity Permit, the ground or soil within 15 metres of a wetland boundary cannot be disturbed or altered;
  - b. The proposed location for the garage is located in a high flood hazard zone based on available data as of July 15, 2025; and
  - c. The Application and resulting Decision pertain solely to the Subject Property and do not extend to or consider development on neighbouring properties.

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<sup>2</sup> *Environmental Protection Act*, RSPEI 1988, c E-9.

## *Step 2: Sound Planning Principles*

30. 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*”.<sup>3</sup>
31. Given the Application’s lack of regulatory compliance, the Decision satisfies both steps in the test.

## **Conclusion**

32. For the reasons outlined above, the Minister submits that this appeal must be dismissed.
33. The Minister encourages the Appellants to contact the Department of EECA to discuss and obtain more information as to where development may be suitable on the Subject Property or apply for necessary permits/approvals.
34. 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,



Christiana Tweedy  
Lawyer for the Minister of  
Housing, Land and Communities

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<sup>3</sup> *Stringer* at para 64.