



Date Issued: March 25, 2024  
Docket: LA23020  
Type: Planning Act Appeal

INDEXED AS: ECO PEI v. Minister of Housing, Land and Communities,  
2024 PEIRAC 3 (CanLII)

Order No: LA24-03

**BETWEEN:**

Environmental Coalition of Prince Edward Island

**Appellant**

**AND:**

Minister of Housing, Land and Communities

**Respondent**

**AND:**

Timothy R. Banks

**Developer**

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**REASONS FOR DECISION**

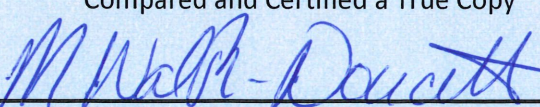
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Panel Members:

J. Scott MacKenzie, K.C. Chair

M. Douglas Clow, Vice-Chair

Kerri Carpenter, Commissioner

Compared and Certified a True Copy  
  
Michelle Walsh-Doucette, Commission Clerk  
Island Regulatory and Appeals Commission

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## **Appearances & Witnesses**

**1. For the Appellant, Environmental Coalition of PEI:**

Gary Schneider and Ann Wheatley

**2. For the Respondent, Minister of Housing, Land and Communities:**

**Counsel:**

Meaghan Hughes and Christiana Tweedy

**Witnesses:**

Dean Lewis, Senior Development Officer, Development Control, Department of Housing, Land and Communities

Jon MacDonald, Chief Building Official, Inspection Services, Department of Housing, Land and Communities

Eugene Lloyd, Manager (Acting), Development Control, Department of Housing, Land and Communities

**3. For the Developer, Timothy R. Banks:**

**Counsel:**

Scott Barry

## 1. INTRODUCTION

1. This is an appeal of the decision of the Minister of Housing, Land and Communities to grant a permit to the Developer, Timothy R. Banks, to construct a single unit summer cottage/seasonal dwelling on PID# 943241, being Lot #2 within the resort development of St. Peters Estates Ltd., located in Greenwich, Prince Edward Island (the "Property").
2. The permit was issued with 10 conditions. Some of the conditions were carried over from the original subdivision approval granted in 2004 because they have not yet been satisfied, including the conditions that lots be serviced by a central water system and the approval of certain environmental plans.
3. The Appellant, Environmental Coalition of Prince Edward Island (ECO PEI), argues that the permit approval process was flawed, and that in approving the conditional permit, the Minister improperly "downloaded" subdivision-wide conditions onto an individual lot owner.

## 2. BACKGROUND

4. The full background and context of this appeal stretches back nearly two decades.
5. Back in December 2004, subdivision of 70 lots for resort development use was approved on a parcel of land located in Greenwich, PEI, owned by St. Peters Estates Ltd. (the "Subdivision"). That subdivision approval was subject to 11 conditions. The conditions that are most germane to this matter include:
  - a. All lots shall be serviced by a central water system that has been designed and constructed in accordance with the requirements of the Department of Environment, Energy and Forestry.
  - [...]
  - e. The resort shall be developed and occupied in accordance with an Environmental Protection Plan, Environmental Management Plan, and Human Use Management Plan as approved by the Department of Environment, Energy and Forestry.
6. There were other conditions with respect to sewage disposal<sup>1</sup>, plumbing, preservation of forest cover, drainage, access and rights-of-ways.
7. The Developer in this appeal, Mr. Banks, owns four lots in the Subdivision.
8. On October 4, 2022, the Developer submitted two permit applications to the Minister in respect of two of those lots. The Minister denied both permit applications on December 15, 2022, on the basis that the conditions of the original Subdivision approval regarding the central water system and approved environmental plans had not been satisfied.
9. The Developer appealed those denials to the Commission on December 20, 2022 (Commission Docket LA22024).
10. As a result of that appeal, the Developer and Minister entered into alternative dispute resolution and eventually resolved the matters in issue. On August 15, 2023, the Developer withdrew the appeal that was the subject of Docket LA22024.

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<sup>1</sup> We note these conditions are not applicable in this matter as they relate to lot numbers and categories unrelated to the Developer's Lot #2.

11. As part of the resolution between the parties in respect of the Docket LA22024, the Minister granted the Developer a conditional permit on July 24, 2023, to construct a single unit summer cottage/seasonal dwelling on PID# 943241, being Lot #2 within the resort development of St. Peters Estates Ltd. (the "Conditional Permit").
12. The Conditional Permit includes 10 conditions. Two of those conditions that are important in this appeal include:
  - 1) Any dwelling on the lot cannot be occupied until the structure has been connected to a central water system that has been designed, constructed and approved in accordance with the conditions of subdivision approval and the conditions of the Department of Environment, Energy and Climate Action including complete compliance with the Certificate of Approval dated April 18, 2005; also in accordance with the Environmental Protection Plan Action, Environmental Management Plan and Human Use Management Plan that have all been approved by Department of Environment, Energy and Climate Action.
  - [...]
  - 3) The lot shall be developed and occupied in accordance with an Environmental Protection Plan, Environmental Management Plan, and Human Use Management Plan that has been approved by Department of Environment, Energy and Climate Action;
13. The approval of the Developer's Conditional Permit brings us to the present appeal.
14. On August 11, 2023, the Appellant filed a Notice of Appeal with the Commission pursuant to section 28 of the *Planning Act*, RSPEI 1988, P-8, in respect of the Minister's approval of the Conditional Permit.
15. The Appellant's position is that:
  - The decision erred in applying the relevant legislation and regulations;
  - The decision of the Minister was arbitrary, procedurally deficient, and raises concerns respecting the reasonable apprehension of bias; and
  - The procedural shortcomings of the appeal process itself has prejudiced a full and fair determination of the hearing of the issues.
16. The Appeal was heard by the Commission on Wednesday, January 31, 2024.

### 3. ISSUE

17. On a planning appeal pursuant to the *Planning Act*, RSPEI 1988, P-8, the Commission uses a two-part test to guide its consideration of the appeal. In the context of Ministerial decisions, that test is:<sup>2</sup>
  - 1) Whether the Minister followed the proper process and procedure as required in the *Planning Act*, the *Planning Act Subdivision and Development Regulations*, and the law in general, including the principles of natural justice and fairness, in deciding on an application for a development permit; and

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<sup>2</sup> See, for example, *Stringer v. Minister of Communities, Land and Environment*, Order LA17-06 (dated August 12, 2015).

- 2) Whether the Minister's decision with respect to the application for development was made in accordance with the *Planning Act, Planning Act Subdivision and Development Regulations*, and has merit based on sound planning within the field of land use planning.
18. Therefore, on this appeal, the Commission must determine whether the Minister's decision to grant the Conditional Permit followed proper procedure and whether the decision was made in accordance with the *Planning Act, Planning Act Subdivision and Development Regulations* (the "*Regulations*"), and based on sound planning principles.

#### **4. DISPOSITION**

19. The Commission denies the appeal. The Commission is satisfied that the Minister's decision to grant the Developer's Conditional Permit followed the proper process and was made in accordance with the *Planning Act* and *Regulations*, and was based on sound planning principles.

#### **5. EVIDENCE**

20. The evidence before the Commission consisted primarily of the Minister's record of the decision, a total of approximately 40 pages and comprised of the Developer's application, the Inspection Report completed by the Development Officer, and other supporting information.
21. The Minister also made written submissions before the hearing, and included approximately 40 additional pages of supporting material, including email correspondence, the 2004 Subdivision approval, and information related to the Developer's prior appeal, being Docket LA22024.
22. At the hearing, the Minister called three witnesses: Dean Lewis, Senior Development Officer; Jon MacDonald, Chief Building Official; and Eugene Lloyd, the Acting Manager of Development Control for the Department of Housing, Land and Communities.
23. The Appellant did not provide any testimonial evidence at the hearing, nor did they call any witnesses. However, prior to the hearing the Appellant made written submissions outlining their position. The submissions were supported by various documents, including filings from Docket LA22024 (the previous appeal before the Commission), pleadings filed in an ongoing civil legal action between the parties (commenced by the Developer), an excerpt from a news article, and an email to the Developer to the Appellant.
24. The Developer did not give any evidence, but did provide written submissions.

#### **6. ANALYSIS**

25. As a preliminary comment to the analysis that follows, the Commission notes that this is not an appeal about the approval of a 70-lot subdivision for resort development use on a parcel of land located in Greenwich, PEI. The Subdivision was approved almost 20 years ago. Therefore, the question for the Commission on this appeal is not whether any development should be permitted on this parcel of land. Rather, the question is whether the Minister of Housing, Land and Communities validly issued a Conditional Permit to the Developer to allow him to construct a single unit summer cottage/seasonal dwelling on Lot #2 in accordance with the approved use of the lot.

26. On a review of the Appellant's submissions, both in writing and at the hearing, the Commission has focussed the points raised by the Appellants into two main concerns: the permit approval process and the development permit conditions. The analysis that follows will discuss each of those points.

#### **A. The Permit Approval Process**

27. The Appellant argues that the approval process respecting the Developer's Conditional Permit deviated from the legislated approval process, raised a reasonable apprehension of bias, and compromised the overall integrity of the decision-making process.
28. In particular, the Appellant highlighted an email in the Minister's Record, from Eugene Lloyd, Acting Manager of Development Control, to Dean Lewis, the Senior Development Officer, stating "*we have committed to providing an approved permit in short order, by the end of the week if possible.*"<sup>3</sup> In their written submissions, the Appellants argue that it is clearly prejudicial to a full and fair review of a development permit application to request that an "approval" be provided "in short order", and that such commitments are not within the parameters of a fair and objective process.
29. In response, the Minister submits that the decision-making in respect of the Conditional Permit was free from bias and was based on the statutory requirements and principles set forth in the *Planning Act* and the *Regulations*. The Minister's evidence supports this submission.
30. Eugene Lloyd explained that the Developer's initial applications, submitted in October 2022, were denied because the conditions imposed when the Subdivision was approved in 2004 had not been satisfied. In particular, one of those conditions was that all lots be serviced by a central water system. Because that Subdivision condition had not been satisfied, development could not occur.
31. When the Developer appealed the denials (Commission Docket LA22024) and the parties entered into settlement discussions, it was through those discussions that the Minister considered placing conditions on the Developer's permit to ensure compliance with the *Regulations*. The Minister is authorized to issue a conditional permit, subject to any conditions necessary to ensure regulatory compliance, in accordance with subsections 4(1) and (2) of the *Regulations*.
32. Eugene Lloyd explained that the settlement discussions between the parties spanned months. Through that process they identified a path forward, and the subsequent approval happened quickly because they did not have to start from scratch in reviewing the Developer's application submitted July 18, 2023.
33. Dean Lewis was the Senior Development Officer who issued the Conditional Permit in July 2023. He testified that he had been familiar with the Developer's previous applications, as he had been involved with them for approximately eight (8) months and had spent a substantial amount of time reviewing them. Mr. Lewis testified that in addition to being familiar with the previous application files, he had also conducted a site visit and contacted the contractors, including the plumbing contractor, who had carried out previous work on the central water system in the Subdivision.
34. Mr. Lewis testified that in revisiting the Developer's application in July 2023, he considered that the lot was approved for development use through the Subdivision approval and he considered the technical requirements of the proposed development in accordance with the *Regulations*, including how the development would sit on the lot, set backs, etc. Mr.

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<sup>3</sup> Supplemental Document submitted by the Minister of Housing, Land and Communities.

Lewis testified that he did not identify any requirements of the *Regulations* that were not satisfied with the Developer's application, aside from the requirement for the development to be serviced by a central water supply.

35. Mr. Lewis testified that through settlement discussions, the Developer expressed that he felt he could address and satisfy the central water supply condition, so that was made a condition of the Conditional Permit. In addition, through his discussions with the Department of Environment, Energy and Climate Action ("EECA"), they requested as a condition of the permit that certain environmental plans be updated.
36. The Developer agrees that the proper process was followed and the Conditional Permit was validly issued. He submitted that the lot in issue was approved for resort development use in 2004, and that the application submitted July 18, 2023, was for a development permit in a manner consistent with the approved use of the lot. By the time the Developer submitted this application, he and the Minister had thoroughly discussed and understood the application, and a concept and path forward had been identified that was agreeable to both parties to permit development on the lot. A fresh application was submitted to follow through with that agreement. The Developer submitted that the track laid from the previous applications streamlined the due diligence requirements, and the Permit was issued under the authority of *Regulations*.

#### **Commission Findings: The Permit Approval Process**

37. The Commission accepts the position of the Minister and Developer. Though it may be the case that the process to approve the Conditional Permit appears to deviate from what might be considered the "standard approval process", on the facts and evidence disclosed in this case, any such deviation did not raise a reasonable apprehension of bias, nor did it compromise the overall integrity of the decision-making process.
38. In this case, it is clear that a unique aspect of this approval process was the fact that the Minister was familiar with the Developer's applications and the parties had previously engaged in settlement discussions to come to a resolution in respect of the initial denial(s). This explains why the approval was granted mere days after the fresh application was received. Therefore, while the Commission can understand why it may seem to the Appellant on the face of the Record that the review process was rushed, it had actually been ongoing for many months. The evidence supports that the Minister, on the whole, considered the Developer's proposed development fairly, objectively and comprehensively.
39. Therefore, the Commission is satisfied that the Minister's decision to grant the Conditional Permit followed proper procedure.
40. As an aside, the Commission endorses the alternative dispute resolution process that the Minister and Developer undertook in respect of the previous denials, and encourages all parties to consider this option in the course of a *Planning Act* appeal.

#### **B. The Development Permit Conditions**

41. With respect to the merits of the decision to grant the Conditional Permit, the Appellant argues that the Minister incorrectly interpreted subsections 4(1) and (2) of the *Regulations*, and that the *Regulations* preclude the approval of a development permit for individual lots, even on a conditional basis, where the conditions imposed upon the parent Subdivision have not been satisfied.



42. The conditions attached to the Conditional Permit that are most relevant to this appeal are conditions 1 and 3:
- 1) Any dwelling on the lot cannot be occupied until the structure has been connected to a central water system that has been designed, constructed and approved in accordance with the conditions of subdivision approval and the conditions of the Department of Environment, Energy and Climate Action including complete compliance with the Certificate of Approval dated April 18, 2005; also in accordance with the Environmental Protection Plan Action, Environmental Management Plan and Human Use Management Plan that have all been approved by Department of Environment, Energy and Climate Action.
- [...]
- 3) The lot shall be developed and occupied in accordance with an Environmental Protection Plan, Environmental Management Plan, and Human Use Management Plan that has been approved by Department of Environment, Energy and Climate Action;
43. Some other conditions from the Subdivision approval were also brought forward to this Conditional Permit for development, including requiring the use of water conserving plumbing fixtures and prohibiting direct access onto the beach road.
44. As context, the *Regulations* provide at subsection 51(1) that a resort development shall be serviced by a central water supply system that complies with the *Environmental Protection Act*. The Subdivision approval granted in 2004 included a condition that all lots be serviced by a central water system designed and constructed in accordance with the requirements of the Department of Environment, Energy and Forestry (now the Department of EECA). The evidence before the Commission is that a central water system had been constructed in the Subdivision, but that it is not operational.
45. With respect to the Environmental Protection Plan, Environmental Management Plan, and Human Use Management Plan (the "Plans"), the evidence from the Minister is that two of the Plans had been approved around the time of the initial Subdivision approval, but that one was only ever submitted in draft form. Further, because all of the Plans are 20 years old, the Department of EECA required updated Plans as a condition of the development permit.
46. In summary, these particular conditions attached to the 2004 Subdivision approval were never fully satisfied and remain outstanding.
47. The Appellant takes the position that only the owner of the Subdivision can ensure compliance with the conditions imposed on the Developer's Conditional Permit and that subdivision-wide conditions cannot, and should not, be assigned to individual lot owners as part of their development permits.
48. In their submission, the 2004 Subdivision conditions can only be undertaken by the owners of the Subdivision who had/have the necessary authority to complete conditions fundamental to the orderly and environmentally acceptable development of the lots within the Subdivision.
49. The Appellant supports this position, in part, by raising the issue of cumulative effects. They submit that a problem with individual property owners satisfying these conditions is that one cannot get a whole picture of what will happen across multiple developments. They argue that successors in title to the Subdivision should remain responsible to satisfy

subdivision-wide conditions because they can better assess the cumulative effects of development across the Subdivision.

50. In response, the Minister submits that the Appellant is incorrect. The Minister submits that the *Planning Act* and *Regulations* do not preclude an individual lot owner from satisfying subdivision-wide conditions. They submit that the Minister considered the statutory requirements set forth in the *Planning Act* and *Regulations*, and other governing legislation, by incorporating these conditions into the Conditional Permit.
51. Eugene Lloyd testified that section 4 of the *Regulations* authorizes the Minister to issue permits with conditions. He said that a primary purpose of permit conditions is to provide clarity to the applicant regarding what needs to be done to permit development. Mr. Lloyd testified that the Minister is less concerned with *who* satisfies the conditions, rather the main objective is to ensure statutory compliance.
52. The Minister submits that, in this case, because the Subdivision owner has not satisfied conditions of the original Subdivision approval, the Developer cannot develop his approved lot. Therefore, by issuing the Conditional Permit, the Minister authorized a path forward and created certainty for the Developer as to what exactly is required in pursuing development on his approved lot, while also respecting the legislative requirements.
53. The Developer made similar submissions to the Minister, arguing that this is a unique situation where the party who would normally be required to fulfil the subdivision-wide conditions has not done so. Therefore, the Conditional Permit is a practical solution to a unique situation and resolves an issue where lot owners have been left in a position where they cannot otherwise realize any use of their lot in a manner that is consistent with their approval and the *Regulations*.

#### **Commission Findings: The Development Permit Conditions**

54. In reviewing the evidence and submissions of the parties, the Commission is satisfied that the Conditional Permit was validly issued in accordance with the *Planning Act* and *Regulations*.
55. The *Regulations* expressly allow development permits to be issued with conditions:

#### **4. Approval with conditions**

- (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 [*Planning Act*], or any relevant sections of the *Environmental Protection Act*, *Roads Act*, *Provincial Building Code Act*, or the *Fire Prevention Act*. [citations omitted]

#### **Person ensures compliance**

- (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.

56. The evidence from the Minister's witnesses is that they are not necessarily concerned with *who* fulfils the conditions, just that they are preconditions to development that must be

fulfilled and complied with prior to development. For example, the evidence from Jon MacDonald, Chief Building Official, was that the Developer will not be granted a building permit to proceed with his development until he satisfies the preconditions of the Conditional Permit.

57. The Commission generally accepts this premise. We pause here to note that *how* the Developer goes about satisfying those conditions (or, in fact, whether he will even be able to satisfy those conditions) is not within the purview of the Commission to comment on in the course of this appeal. Those matters would likely raise enforcement issues, over which the Commission has no jurisdiction.<sup>4</sup> But with respect to the present appeal, the Commission is satisfied that the Minister can ensure compliance with the *Regulations*, or other governing legislation, by imposing conditions on a development permit.
58. The Appellants seem to understand that the conditions are specific to only the Developer's lot, and they submit that it is inefficient to download these conditions to individual lot owners on a lot-by-lot basis. However, the Commission understands the Minister's submissions and evidence, from both Eugene Lloyd and Dean Lewis, to be that these conditions are subdivision-wide, and not specific to the one particular lot the Developer seeks to develop.
59. With respect to sound planning principles, the evidence from the Minister's witnesses was that most sound planning principles are assessed and considered at the Subdivision approval stage. For example, Dean Lewis testified that the design of the Subdivision, and some of the conditions relating to unique vegetation and forest cover, were meant to address environmental issues in the area. However, Mr. Lewis testified that, in his opinion, approving the Conditional Permit was also consistent with sound planning principles. He said that at the development stage, most sound planning principles are outlined in the *Regulations* and that by imposing conditions to comply with the *Regulations*, the decision accords with planning principles. The Commission further notes that the Conditional Permit also requires that due to the environmentally sensitive nature of the lands, the Developer must comply with any construction restrictions, intended to protect the environment, as imposed by the Department of EECA.
60. The Commission is satisfied that the Conditional Permit is consistent with sound planning principles.
61. As a final comment, the Commission notes that, importantly, the Appellant did not provide expert planning advice to demonstrate to the Commission that the Minister made the wrong decision. The best (and only) planning-related evidence before the Commission was provided by the Minister's witnesses, Dean Lewis and Eugene Lloyd. The Commission accepts their evidence as credible on the issues testified to. The Commission has previously commented in in Order LA18-02 (*Queens County Condominium Corporation No. 40 v, City of Charlottetown*) that where sound planning principles are at issue, it is incumbent upon an appellant to bring forward objective and reliable evidence from a planning professional or a person with experience in making planning-related decisions, and that more than the subjective concerns are required.
62. In conclusion, the Commission is satisfied that the Minister can impose these kinds of conditions on a development permit, and that the decision to issue the Conditional Permit in this case was made in accordance with the *Planning Act*, *Planning Act Subdivision and Development Regulations*, and based on sound planning principles.

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<sup>4</sup> The Commission has previously found that it does not have jurisdiction over matters of enforcement. See Order No. LA22-03, *Brian R. MacKay v. Minister of Agriculture and Land*, at para 12.

### **C. Additional Concerns Raised by the Appellants**

63. The Commission would like to take the opportunity to comment briefly regarding some additional concerns raised by the Appellants.
64. The Appellants made submissions, both in writing and at the hearing, to highlight, in their words, “several shortcomings with process and procedure” that they submit impeded their participation in this appeal. In particular, the Appellants urged both the Commission and the Government of Prince Edward Island to safeguard the *Planning Act* appeal process so that parties can fully and fairly exercise their right to appeal.
65. The Commission is a statutory tribunal and only has jurisdiction and authority over its own process. For example, the Commission does not have any authority or jurisdiction respecting whether or when civil matters can be brought before the Supreme Court or how they proceed once there. However, the Commission’s Rules of Practice and Procedure are designed, in part, to ensure all parties to a proceeding before the Commission are afforded a reasonable opportunity to be heard in this forum<sup>5</sup> and the Commission expects all parties to proceedings to conduct themselves in an appropriate and respectful manner and to not engage in behaviour that is disrespectful or intimidating.<sup>6</sup>
66. While the Commission appreciates this feedback from the Appellant, we wish to confirm that the Commission has no concerns that any party to this appeal acted inappropriately in the course of this particular proceeding before the Commission.

## **7. CONCLUSION**

67. The appeal is dismissed. The Commission is satisfied that the Minister’s decision to issue the Conditional Permit followed the proper procedure and was made in accordance with the *Planning Act, Regulations*, and based on sound planning principles.
68. The Commission thanks the Appellant, the Minister and the Developer for their submissions in this matter.

## **8. ORDER**

- 69. The appeal is dismissed.**

**DATED** at Charlottetown, Prince Edward Island, **Monday, March 25, 2024**

**BY THE COMMISSION:**

(sgd. J. Scott MacKenzie, K.C., Chair)

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J. Scott MacKenzie, K.C., Chair

(sgd. M. Douglas Clow, Vice-Chair)

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M. Douglas Clow, Vice-Chair

(sgd. Kerri Carpenter, Commissioner)

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Kerri Carpenter, Commissioner

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<sup>5</sup> Island Regulatory and Appeals Commission’s Rules of Practice and Procedure, Rule 1.3.

<sup>6</sup> Island Regulatory and Appeals Commission’s Rules of Practice and Procedure, Rule 62.

## NOTICE

Section 12 of the ***Island Regulatory and Appeals Commission Act*** reads as follows:

*12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it, or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the ***Act*** provide as follows:

*13(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.*

*(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.*

**NOTE:** In accordance with IRAC's *Records Retention and Disposition Schedule*, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.