

SCHEDULE E - ENVIRONMENTAL PROTECTION OVERLAY

INTENT

The intent of this Schedule is to preserve the environmental integrity of the Town of Portugal Cove-St. Philip's by defining the necessary terms and conditions to protect environmentally sensitive areas from the negative impacts and influences of development. It is also the intent of this Schedule to provide for a flexible framework and approach that will not interfere with permitted development on land that is deemed not to have environmentally sensitive features.

This Schedule E and its companion Environmental Protection Overlay Map provides Council with additional specific controls over environmental protection by appending the regulations of this Schedule to the Town's Development Regulations. Schedule E allows Council to impose conditions on the use of land related to environmentally sensitive areas without affecting the underlying zone or creating an entirely new zone. This Schedule also provides enhanced flexibility as the environmental map may change without requiring property owners to go through a rezoning process.

All use zones, as defined in Schedule C of the Town's Development Regulations and identified on the Zoning Map, are subject to the terms and conditions of this Schedule. Where any property and lands in an area are designated as environmentally sensitive on the Schedule E: Environmental Protection Overlay Map, the following terms and conditions shall apply:

ENVIRONMENTAL PROTECTION MAP

The Environmental Protection Overlay Map contained in Schedule E is a GIS-based topographic map and includes the following layers:

- (a) A thirty (30.0) metre coastline buffer;
- (b) A fifteen (15.0) metre buffer for watercourses showing on 1:50,000 scale mapping;
- (c) A thirty (30.0) metre buffer for water bodies showing on 1:50,000 scale mapping;
- (d) Steep slopes greater than 25% over a distance of five metres;
- (e) Designated Flood Risk Area as defined by the Department of Environment and Conservation and the Town's *Stormwater Management Plan*; and,
- (f) Wetlands showing on 1:50,000 scale mapping.

Where there is uncertainty regarding the existence of an environmentally sensitive area, such as a steep slope, watercourse or wetland, field verification by a qualified consultant will be required at the expense of the developer or land owner. If the qualified consultant determines that the size and area extent of

the environmentally sensitive area needs to be adjusted, or that it does not exist, the map will be refined and the land in question will no longer be subject to the appropriate terms and conditions of this Schedule, but shall continue to be subject to the requirements outlined in the appropriate use zone in Schedule C.

When a change to the Environmental Protection Overlay Map is required to reflect field verification that has taken place, Council shall notify the public of the proposed revision through the insertion of a public notification into a local newspaper. The notification shall state the place and time during which the proposed revision can be inspected and provide seven (7) days for the public to provide written feedback on the revision. After considering public comment, Council may choose to pass a motion, by a majority of its members, to adopt the map revision.

(1) Coastlines

Where a cliff's edge exists, the 30.0m buffer will be established from the top of cliff ("walkable land"). Where no cliff's edge exists, the 30.0m buffer will be established from the ordinary high water mark of the ocean.

No development shall be permitted within thirty (30.0) metres of the ocean (Conception Bay) with the exception of conservation structures, such as those designed to control flooding and erosion, as well as bridges, pathways and sewer lines. All development occurring within this limit is subject to the approval of the Department of Environment and Conservation, and Council. Where fish habitat may be affected, approval shall also be required by the Federal Department of Fisheries and Oceans.

(2) Watercourses

Watercourses include waterways such as creeks, streams and rivers. An environmental buffer of fifteen (15.0) metres from the ordinary high water mark of all watercourses showing on 1:50,000 scale mapping has been established in the Environmental Protection Overlay Map. **No development activity shall be undertaken within this buffer without the approval firstly of the Federal Department of Fisheries and Oceans and then, by Council (at its discretion).**

(Development Regulations Amendment No. 2, 2015)

Where there is uncertainty regarding the existence of a watercourse identified on the Environmental Protection Overlay Map, field verification by a qualified consultant will be required at the expense of the developer. If the qualified consultant determines that the size and area extent of the watercourse needs to be adjusted, or that the watercourse does not exist, the buffer area established in the Environmental Protection Overlay Map will either be refined, or where the sensitive feature does not exist, the buffer

shall not apply, and the land will be subject to the terms and conditions of the use zone indicated on the Land Use Zoning Map.

(3) Water Bodies

An environmental buffer of thirty (30.0) metres from the high water mark of water bodies, such as ponds and lakes, showing on 1:50,000 scale mapping has been established in the Environmental Protection Overlay Map. **No development activity shall be undertaken within this buffer without the approval firstly of the Federal Department of Fisheries and Oceans and then, by Council (at its discretion).**

(Development Regulations Amendment No. 2, 2015)

(4) Steep Slopes

No buildings, structures or placement or removal of fill will be permitted on any lands designated as Restricted by the St. John's Urban Region Regional Plan, or within slopes that exceed twenty-five percent (25) over a distance of five (5.0) or more metres. **Council may, at their discretion, allow activity or grading work required in these areas for the safety and protection of existing properties in accordance with Regulation 70.**

Development may be permitted within ten (10.0) metres of the top or bottom of slopes that exceed twenty-five percent (25%) over a distance of five (5.0) or more metres at the discretion of Council.

(Development Regulations Amendment No. 3, 2019)

Areas designated as steep slopes are identified on the Environmental Protection Overlay Map.

In certain cases, Council may use its discretion and may require a development applicant to engage a geotechnical engineer or other qualified consultant to determine and certify whether a steep slope is "minor" in nature and whether it may be graded appropriately and in line with Regulation 70 of the Town's Development Regulations. "Minor" steep slopes are defined as those slopes that are less than one hectare in area. Where a steep slope is not deemed to be "minor," such as slopes that form part of a continuous range of hill tops or coastline that are larger than one hectare in area, no buildings, structures or placement or removal of fill shall be permitted.

(5) Designated Flood Risk Areas

The Province has formally identified and mapped areas across Newfoundland and Labrador that are subject to flooding. The Town of Portugal Cove-St. Philip's also identified areas that are subject to flooding in its *Stormwater Management Plan*. The Town's Stormwater Management Plan however does

not replace the 1996 Hydrological Study, in that the design of new structures should be based upon flows provided within the 1996 Report until such time that a new Hydrological Study has been undertaken and updated corresponding mapping has been produced.

The Environmental Protection Overlay Map indicates two designated flood risk areas in the Town of Portugal Cove-St. Philip's that represent the areas identified by both the Province and the Town. Any development activities within these areas should be in accordance with the Department of Environment and Conservation's Policy for Floodplain Management W.R. 96-1 and the *Water Resources Act*.

Areas that are likely to be flooded once in any twenty-year interval are "designated floodways," while areas likely to be flooded once in any hundred-year interval are identified as "floodway fringe" areas.

A 'Floodway' is defined by the Department of Environment and Conservation as that portion of a flood plain where the most frequent flooding occurs, and where the flow of water is fastest. This 'Floodway' area is determined on the basis of the 1 in 20 year (1:20) return flood period.

A 'Floodway Fringe' is defined as the portion of a flood plain where less frequent flooding occurs and where the flow of water is considered to be tranquil. The 'Floodway Fringe' area is determined on the basis of where flooding occurs up to 1 in 100 years (1:100) on average.

A permit is required under Section 48 of the *Water Resources Act* for any activities in or within fifteen (15.0) metres of these Designated Flood Zones.

Development within the Floodway shall be restricted to public uses and public works, and any proposed use of a facility and site will not involve any storage of pollutants such as fuels, chemicals, pesticides, etc.

Development within the Floodway Fringe designation shall meet the following conditions:

- (a) The ground floor elevation of the structure is higher than the 1:100 year flood level;
- (b) The structure will not interfere with flow of water or displace water such that it creates a worse flooding situation for other properties;
- (c) The structure and associated utilities must be designed and constructed in accordance with approved flood proofing guidelines of the Province, and entrances and exits from the building can be safely used without hindrance in the event of a flood; and,
- (d) The proposed use of the facility and site will not involve any storage of pollutants such as fuels, chemicals, pesticides, etc.

(6) Wetlands

Wetlands, which include bogs, fens, marsh, swamps, and shallow water, perform varied integral ecological functions such as: collect and store runoff, moderate and attenuate downstream flood flows, reduce downstream flooding and erosion, clean and purify water, recharge groundwater zones, and provide unique habitat for plants and animals.

Wetland development means the carrying out of an activity or operation which includes the construction of ditches, mechanical disturbance of the ground, alteration of normal water level fluctuations, infilling, drainage, dredging, channelization, and removal of vegetation cover and/or organic matter on a wetland for social or economic benefits, or the making of any change in the use or the intensity of use of any wetland which affects its hydrologic characteristics or functions.

The Province's Water Resources Act has provisions within Sections 30, 48 and 64 that directly address wetlands. For example, developers and/or property owners must apply under Section 48 of the Water Resources Act for work proposed within wetland areas. The Department of Environment and Conservation additionally has a 'Policy for Development in Wetlands'. The Department promotes avoidance of development within wetland areas and generally does not recommend approval for residential development on wetland areas.

Where Council deems that a proposed development may involve or may affect a wetland, it shall be a policy of Council to, at its discretion:

- (a) Require the developer to have the wetland delineated by a qualified consultant and to converse with the Department of Environment and Conservation with regard to the requirements of the Water Resources Act and for compliance with the Policy for Development within a Wetland;
- (b) Establish a sufficient buffer from the edge of the wetland in which development will not be permitted as based upon the qualified consultant's recommendations and further as based upon consultation with the Department of Environment and Conservation and with the Water Resources Management Division;
- (c) Require other conditions or restrictions to protect the wetland; and/or
- (d) Refuse to approve the development if it believes that identified impacts cannot be sufficiently minimized or mitigated.

Where there is uncertainty regarding the existence of a wetland identified on the Environmental Protection Overlay Map, field verification by a qualified consultant will be required at the expense of the developer, and confirmed by the qualified consultant in consultation with the Department of Environment and Conservation, and with the Water Resources Management Division.

If the qualified consultant and the Province determine that the wetland area is non-developable, no development within the wetland shall proceed.

If the qualified consultant and the Province determine that size and area extent of the wetland needs to be adjusted, or that the wetland does not exist, the buffer area established in the Environmental Protection Overlay Map will either be refined, or where the wetland does not exist, the buffer area shall not apply, and the land will be subject to the terms and conditions of the use zone indicated on the Land Use Zoning Map.