

**TOWN OF PORTUGAL COVE-ST, PHILIP'S
DEVELOPMENT REGULATIONS, 2014-2024**

DEVELOPMENT REGULATIONS AMENDMENT NO. 23, 2022

SCHEDULE E- ENVIRONMENTAL PROTECTION OVERLAY

MAP 3-ENVIRONMENTAL PROTECTION MAP

(Amendment to text and maps)



OCTOBER, 2022



URBAN AND RURAL PLANNING ACT, 2000

RESOLUTION TO APPROVE

**TOWN OF PORTUGAL COVE-ST. PHILIP'S
DEVELOPMENT REGULATIONS, 2014-2024**

DEVELOPMENT REGULATIONS AMENDMENT No. 23, 2022

Under the authority of section 16, section 17 and section 18 of the *Urban and Rural Planning Act, 2000*, the Town Council of Portugal Cove-St. Philip's:

- a) adopted the Amendment No. 23, 2022 to the Town of Portugal Cove-St. Philip's Development Regulations on the _____ day of _____, 2023.
- b) gave notice of the adoption of the Amendment No. 23, 2022 to the Town of Portugal Cove-St. Philip's Development Regulations in conformance with the *Urban and Rural Planning Act, 2000*;
- c) set the _____ day of _____, 2023, at for the submission of objections/submissions for the Commissioner responsible for the public hearing to consider objections and submissions.

Now under the authority of Section 23 of the *Urban and Rural Planning Act, 2000*, the Town Council of Portugal Cove-St. Philip's approves the Amendment No. 23, 2022 to the Town of Portugal Cove-St. Philip's Development Regulations as adopted.

SIGNED AND SEALED this _____ day of _____, 2023.

Mayor: _____

Clerk: _____

Development Regulations/Amendment	
<u>REGISTERED</u>	
Number	_____
Date	_____
Signature	_____

(Council Seal)

URBAN AND RURAL PLANNING ACT, 2000

RESOLUTION TO ADOPT

**TOWN OF PORTUGAL COVE-ST. PHILIP'S
DEVELOPMENT REGULATIONS AMENDMENT No. 23, 2022
DEVELOPMENT REGULATIONS, 2014-2024**

Under the authority of Section 16 of the Urban and Rural Planning Act, the Town Council of Portugal Cove-St. Philip's adopts the Town of Portugal Cove-St. Philip's Development Regulations Amendment No. 23, 2022.

Adopted by the Town Council of Portugal Cove-St. Philip's on the day of, 2023.

Signed and sealed this _____ day of _____ 2023.

Mayor: _____

Clerk: _____

(Council Seal)

CANADIAN INSTITUTE OF PLANNERS CERTIFICATION

I certify that the attached Town of Portugal Cove-St. Philip's Development Regulations Amendment No. 23, 2022, has been prepared in accordance with the requirements of the Urban and Rural Planning Act.



MCIP: Anna Myers

Member of Canadian Institute of Planners (MCIP)

TOWN OF PORTUGAL COVE-ST. PHILIP'S
DEVELOPMENT REGULATIONS AMENDMENT No. 23, 2022

BACKGROUND

The Town of Portugal Cove-St. Philip's proposes to amend its Development Regulations, Schedule E-Environmental Protection Overlay and Map 3-Environmental Protection Map of the Development Regulations, 2014-2024. There is an associated Municipal Plan Amendment No. 14, 2022.

In general terms, the purpose of this amendment is to update Schedule E-Environmental Protection Overlay and Map 3-Environmental Protection Overlay Map to reflect new, more accurate data for defining the boundaries of environmentally sensitive areas; and to bring these into compliance with the *Urban and Rural Planning Act, 2000*. The text to Regulation 70 is amended for consistency with Schedule E-Environmental Protection Overlay.

The following overlays will be removed from Map 2: Development Regulations Map: Coastal buffer (30 m), Watercourse Buffer (15 m) and Watercourse Buffer (30 m). All environmental protection overlays will be shown only on Map 3: Environmental Protection Overlay Map in the Development Regulations.

PUBLIC CONSULTATION

During the preparation of this amendment Council undertook the following initiative so that individuals and groups could provide input to the proposed Development Regulations Amendment. The Town Council of Portugal Cove-St. Philip's published a notice in The Telegram newspaper on October 21, 2022, and the Northeast Avalon Times on October 2022 advertising the proposed amendment seeking comments or representations from the public. A copy of the Public Notice was posted on the Town's website. Residents were invited to view the documents and maps at the Town Hall during normal business hours, and to provide any comments or concerns in writing to Council by the November 4, 2022 deadline.

At a future date, individuals and groups shall also have another opportunity for submissions at a Public Hearing chaired by an independent Commissioner.

Two submissions were received (see attached):

1. Advisory Committee on the Environment; and
2. Mr. ATIPPA, resident.

1. Advisory Committee on the Environment (ACE)

Town representatives met with four ACE representatives to review their submission. It appeared that most of the suggestions and recommendations were already accommodated with the updated mapping

and could be confirmed by using the Google earth version of the mapping during the meeting. Each area of concern was reviewed in person with the ACE to ensure full understanding and interpretation of the maps. Also, some of the comments were already accommodated as they had been addressed in previous meetings with ACE at the time that the consultant (Enfor Consulting Services) was preparing the mapping and consulting with the public. ACE indicated a concern regarding whether intermittent streams; however, as the requirements for these are the same as streams, they felt that the protection measures were adequate.

The only outstanding item for further research and review was focussed on mini-wetlands that ACE members had identified through field research. However, both ACE and the Town wished to undertake further research with the professional hydrologist and the Water Resources Management Division before finalizing any further recommendations regarding this issue. Therefore, no changes were brought forward at this time, but ACE were satisfied that they would have further opportunities to bring forward the results of this additional research during the Municipal Plan Review process.

In conclusion, ACE agreed that there was no need for changes to Map 3 at this time.

2. Mr. **ATIPPA,**
2015 S 46, resident

A meeting was held between Town of Portugal Cove-St. Philip's staff and Mr. **ATIPP** in order to discuss his concerns. As a result of this conversation, a series of 'Questions and Answers' were developed in order to address his concerns (see attached). The key messages were that the Schedule E and Map 3 were already in legal effect and that the amendment provided greater mapping and regulatory clarity for the benefit of both residents and Council. It should be noted that many of the areas were reduced in size due to the much-improved accuracy of the mapping data used to create the protection areas on Map 3.

In order to accommodate Mr. **ATIPPA,**
2015 key concern regarding residential development, the Town amended the text as follows:

- In Development Regulation #70 by adding "...except for such work occurring in overlay areas identified in Map 3-Environmental Protection Overlay Map where a permit shall be required for all such work..." [see text in bold]; and,
- Item 4 (2) (b) of the Schedule E [see text in bold] "...Infill single dwellings and associated accessory buildings will be considered, at the discretion of Council, where Council may require a report from a qualified professional to determine and certify the suitability of the site for this type of development only." In the existing Development Regulations, this exemption only applied in the Traditional Community zone. This change is reflected in the attached documents.

ST. JOHN'S URBAN REGION REGIONAL PLAN

The proposed Development Regulations Amendment No. 23, 2022 consists of text and map changes to 2014-2024 Development Regulations Map and conforms to the St. John's Urban Region Regional Plan.

It is concluded that no Regional Plan Amendment is required.

DEVELOPMENT REGULATIONS AMENDMENT No. 23, 2022

TEXT AMENDMENTS

The Town of Portugal Cove-St. Philip's Development Regulations is amended by amending text in Regulation 70 and replacing the existing Schedule E-Environmental Protection Overlay, as set out below:

- AMENDMENTS TO REGULATION 70: New text in bold font and text to be removed identified with strikeout:

70. SOIL REMOVAL AND DEPOSIT AND SITE GRADING

- (1) A development permit is not required for removal, deposit, or grading of soil, sand, gravel, rock, or other aggregate material if the activity is part of an approved development project or affects less than 125 cubic metres of material, **except for such work occurring in overlay areas identified in Map 3-Environmental Protection Overlay Map where a permit shall be required for all such work;**
- (2) No other excavation, removal, or depositing of material, or site grading, shall be carried out unless a development permit under these Regulations has been issued by Council.
- (3) Any excavation, removal and depositing of soil, sand, gravel, and rock, that requires a development permit may be issued a temporary permit provided the work is based on a grading plan, will result in an improved site for permitted uses, while retaining as much of the natural features of the land as possible. The following conditions shall be met:
 - (a) The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal and any grade changes shall be in keeping with the general appearance of neighbouring developed areas;
 - (b) Land intended for the activity or grading has a slope of less than 25%. Lands with a slope greater than 25% over a distance of five (5) or more metres, shall be protected and shall not be developed except for infill residential single dwelling development proposals including accessory buildings, at the discretion of Council, as a discretionary use, and except on the further conditions that such proposals are accompanied and supported by a qualified geotechnical or other engineering certified and stamped report and recommendations, such land is not designated by the St. John's Urban Region Regional Plan as 'Restricted', and all such proposals are approved by Council;

- REPLACE THE EXISTING SCHEDULE E-ENVIRONMENTAL PROTECTION OVERLAY WITH THE NEW SCHEDULE E AS SET OUT BELOW

SCHEDULE E

ENVIRONMENTAL PROTECTION OVERLAY

INTENT

The intent of this Schedule is to enable the policies of the Municipal Plan to preserve the natural environmental integrity of the Town of Portugal Cove-St. Philip's by defining the necessary terms and conditions within the Town's Development Regulations to protect environmentally sensitive areas from the negative impacts and influences of development.

INTERPRETATION

All Land Use Zones, as defined in the Town's Development Regulations and identified on the Development Regulations Map, are subject to the terms and conditions of this Schedule. The permitted and discretionary uses on the Use Zone Tables apply within the zone identified on the Development Regulations map subject to any restrictions on the types of use as set out in this Schedule for land that falls within the overlays identified on Map 3-Environmental Protection Overlay map.

The PDF of Map 3-Environmental Protection Overlay map is the signed and certified, registered map representing the data contained in GIS format registered under the requirements of the *Urban and Rural Planning Act, 2000*.

Where any property and lands in an area fall within the environmentally sensitive areas identified on the Map 3: Environmental Protection Overlay map, the terms and conditions set out in this Schedule shall apply. Council may impose additional conditions in addition to those set out in this Schedule; and, if Council deems that the mitigative measures associated with any proposed development are insufficient to address identified impacts to the satisfaction of Council, then Council may refuse the application.

ENVIRONMENTAL PROTECTION OVERLAY MAP

Map 3-Environmental Protection Overlay map forms part of Schedule E-Environmental Protection Overlay. It identifies the following environmental protection overlays:

<ul style="list-style-type: none"> • Coastal Buffer (30 m) 	<p>Data source: 2022 Hydrology mapping prepared by EnFor Consulting Services, based on 2014 LIDar Data and 2019 digital aerial imagery.</p>
<ul style="list-style-type: none"> • Watercourse 	
<ul style="list-style-type: none"> • Watercourse Buffer (15 m) 	
<ul style="list-style-type: none"> • Intermittent Stream 	
<ul style="list-style-type: none"> • Indeterminant Stream 	
<ul style="list-style-type: none"> • Waterbody (excluding wetlands) 	
<ul style="list-style-type: none"> • Waterbody (excluding wetlands) Buffer (30 m) 	
<ul style="list-style-type: none"> • Wetland-High protection 	
<ul style="list-style-type: none"> • Wetland-Medium protection 	
<ul style="list-style-type: none"> • Wetland-Low protection 	
<ul style="list-style-type: none"> • Wetland Buffer (15 m) 	<p>Data source: Designated Flood Risk Areas as defined by the Water Resources Management Division of the Government of Newfoundland and Labrador in 2015, and incorporating the Town's <i>Stormwater Management Plan</i>;</p>
<ul style="list-style-type: none"> • Floodway (1:20 year) 	
<ul style="list-style-type: none"> • Floodway Fringe (1:100 year) 	<p>Data source: Based on from the 2016 high resolution mapping provided by EnFor Consulting Services, based on 2014 LIDar Data and 2019 digital aerial imagery.</p>
<ul style="list-style-type: none"> • Steep Slope (>25%) 	
<ul style="list-style-type: none"> • Steep Slope Buffer (10 m) 	

AMENDMENTS

Where there is uncertainty regarding the extent of an environmental protection overlay boundary identified on Map 3-Environmental Protection Overlay map, field verification by a qualified consultant shall be required at the expense of the developer or land owner. In addition, for waterbodies as defined under the *Water Resources Act, 2002* (including lakes, ponds, rivers, streams, brooks, and wetlands), the Town shall refer the request to the Water Resources Management Division for comment and recommendations.

Amendments to Schedule E-Environmental Protection Overlay and Map 3- Environmental Protection Overlay map shall be conducted in accordance with the requirements of the *Urban and Rural Planning Act, 2000*.

(1) Coastlines

The coastal buffer shall be established as follows:

- Where a cliff's edge exists, the 30-metre buffer shall be established from the top of cliff .
- Where no cliff's edge exists, the 30-metre buffer shall 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) except as set out in the Use Zone Table in the Town Development Regulations for the zone in which the land is

situated and the Water Resources Management Division Policy Directive: W.R. 97-1: Policy of Development in Shore Water Zones and, as applicable, W. R. 91-1: Policy for Infilling Bodies of Water.

All development occurring within this buffer is subject to the approval of the Water Resources Management Division, the Crown Lands Administration Division, Department of Fisheries, Forestry and Agriculture, and Council. Where fish habitat may be affected, approval shall also be required by the Federal Department of Fisheries and Oceans.

(2) Watercourses

Watercourses includes rivers, brooks and streams, including intermittent and indeterminate streams. The location of watercourses and an environmental watercourse buffer of fifteen (15.0) metres from the ordinary high water mark of all watercourses is mapped on the Map 3-Environmental Protection Overlay map. No development shall be permitted within the fifteen (15.0) metre buffer except as set out in the Use Zone Table in the Town Development Regulations for the zone in which the land is situated and the Water Resources Management Division Policy Directive: W.R. 97-1: Policy of Development in Shore Water Zones and, as applicable, W. R. 91-1: Policy for Infilling Bodies of Water.

All development activity undertaken in watercourses and within the watercourse buffer is subject to the approval of the Water Resources Management Division, the Crown Lands Administration Division, Department of Fisheries, Forestry and Agriculture, Council, and where fish or fish habitat are affected, the federal Department of Fisheries and Oceans.

Habitat Assessment requirements (as defined below in provision 6):

- Watercourses: Council shall require the preparation of a Habitat Assessment, for proposed development along watercourses and within the watercourse buffer, except for Infill Development areas, where Council may, at their discretion, apply this requirement.
- Intermittent streams: Council may, at their discretion, require the preparation of a Habitat Assessment;
- Indeterminate streams: Council may, at their discretion, require the preparation of a Habitat Assessment.

(3) Waterbodies (excluding wetlands and watercourses)

The location of Waterbodies and an environmental Waterbody Buffer of thirty (30.0) metres from the high water mark of waterbodies has been established on Map 3-Environmental Protection Overlay map.

No development shall be permitted within thirty (30.0) metres of a Waterbody except as set out in the Use Zone Table in the Town's Development Regulations for the zone in which the land is situated and the Water Resources Management Division Policy Directive: W.R. 97-1: Policy of Development in Shore Water Zones and, as applicable, W. R. 91-1: Policy for Infilling Bodies of Water.

All development activity undertaken within this buffer is subject to the approval of the Water Resources Management Division, Council, and the federal Department of Fisheries and Oceans.

- Habitat Assessment requirements:

Waterbodies: Council shall require the preparation of a Habitat Assessment (as defined below in provision 6), for proposed development along Waterbodies and within the Waterbody Buffer, except for Infill Development areas, where Council may, at their discretion, apply this requirement.

(4) Steep Slopes

Definitions:

- a. Steep Slopes: Steep slopes are naturally occurring slopes with a gradient of greater than 25% over a minimum distance of five (5.0) metres;
- b. Steep Slope Buffer: The steep slope buffer consists a ten (10) metre buffer surrounding a steep slope as defined above in 4 (a);

The following restrictions shall apply:

1. No buildings, structures or placement or removal of fill shall be permitted on any lands designated as Restricted by the St. John's Urban Region Regional Plan, 1976;
2. No buildings, structures or placement or removal of fill shall be permitted on a Steep Slope with the following exceptions:
 - a. Council may, at their discretion, allow activity or grading work required in these areas for the safety and protection of existing properties, where Council may require a qualified professional to determine and certify the necessity and safety regarding the activity; and,
 - b. Infill single dwellings and associated accessory buildings will be considered, at the discretion of Council, where Council may require a report from a qualified professional to determine and certify the suitability of the site for this type of development only;**
3. Steep Slope Buffer: Development may be permitted within ten (10.0) metres of the top or bottom of a steep slope, at the discretion of Council, where Council may require a qualified professional to determine and certify the suitability of the site for development;

(5) Designated Flood Risk Areas

The Water Resources Management Division (WRMD) of the Government of Newfoundland and Labrador is responsible under the *Water Resources Act, 2002* to map flood risk areas in the province. The most recent Flood Risk mapping for the Town of Portugal Cove-St. Philip's was completed in 2015 and sets out the Floodway and Floodway Fringe areas in the town. The Town of Portugal Cove-St. Philip's also identified areas that are subject to flooding in its *Stormwater Management Plan, 2010*. These areas are located within the Floodway and Floodway Fringe areas mapped for the WRMD updated Flood Risk mapping published in 2015.

The Floodway and Floodway Fringe areas identified on Map 3-Environmental Protection Overlay map are defined as follows:

- Floodway: this is the 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.
- Floodway Fringe: This is 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.

Applications processing: Only the permitted and discretionary uses from the Use Zone Table for each Land Use Zone within the Floodway and Floodway Fringe areas are allowed subject to the uses set out in the Policy Directive W.R. 96-1: Policy for Flood Plain Management. The development requirements set out in Policy Directive W.R. 96-1 are also required in addition to any conditions set by Council.

Developers and/or property owners must have approval under Section 48 of the *Water Resources Act, 2002* for work proposed within Floodway and Floodway Fringe areas.

(6) Wetlands

Wetlands are mapped on Map 3-Environmental Protection Overlay map as classified in the 2022 Hydrology report as follows:

- High protection: wetland contains a stream and/or other water bodies that are interconnected or directly adjacent to one of the significant river/stream systems;
- Medium protection: an isolated wetland that has an area of 2,500 m² of greater; and,
- Low protection: an isolated wetland that has an area less than 2,500 m².

Wetlands means land that has the water table at, near or above the land surface and includes bogs, fens, marshes, swamps and other shallow open water areas. They 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, 2002* has provisions within Sections 30, 48 and 64 that directly address wetlands. Developers and/or property owners must apply under Section 48 of the *Water Resources Act, 2002* for work proposed within wetland areas. The following Water Resources Management Division policies apply with regard to wetlands: W.R. 97-2: Policy for Development in Wetlands and W.R. 97-1: Policy of Development in Shore Water Zones.

The Wetland buffer of fifteen (15.0) metres is mapped for all identified wetlands on Map 3.

Council has the following requirements regarding development within Wetlands and the Wetland buffers:

1. High Protection Wetlands and Wetland Buffer:
 - a. Council shall require a qualified professional to determine and certify the safety regarding the activity, except for Infill Development areas where Council may, at their discretion, apply this requirement;
 - b. Council shall require the preparation of a Habitat Assessment (as defined below), except for Infill Development areas, where Council may, at their discretion, apply this requirement.

2. Medium Protection Wetlands and Wetland Buffer:
 - a. Council may, at their discretion, require a qualified professional to determine and certify the safety regarding the activity;
 - b. Council may, at their discretion, require the preparation of a Habitat Assessment (as defined below).

3. Low Protection Wetlands and Wetland Buffer:
 - a. Council may, at their discretion, require a qualified professional to determine and certify the safety regarding the activity;
 - b. Council may, at their discretion, require the preparation of a Habitat Assessment (as defined below).

Definition of Habitat Assessment: A Habitat assessment shall address following matters: Current representation of habitat, plant and wildlife species, or natural features in the area, including abundance, diversity and complexity of species and habitat (land and water), presence of species of conservation concern (e.g. rare, vulnerable, threatened, endangered, declining, uncommon, sensitive, endemic species), condition/quality of site, potential for long-term protection of site/habitat, description of habitat/site (size, shape, location), evidence of use, and other perceived values, such as value of a site to the larger ecosystem in which it is found (maintenance of hydrological and nutrient cycles, erosion control) and value of a site to humans (scientific and educational studies, aesthetic and recreational values). The Habitat Assessment shall be undertaken by a Professional Biologist, with accreditation to the satisfaction of Council.

DEVELOPMENT REGULATIONS AMENDMENT No. 23, 2022

MAP AMENDMENTS

The Town of Portugal Cove-St. Philip's Development Regulations is amended by replacing the existing Map 2: Development Regulations Map and Map 3-Environmental Protection Map with the updated attached maps:

- Map 3 -Environmental Protection Overlay Map
- Map 2: Development Regulations Map