

### Summary of Amendments:

Schedule E: Environmental Protection Overlay has been revised in accordance with the following amendments.

<b>Amendment #</b>	<b>Registration #</b>	<b>Gazetted</b>
DR Amendment No. 2, 2015	4000-2015-045	September 4, 2015
DR Amendment No. 3, 2019	4000-2019-049	March 25, 2019
DR Amendment No. 23, 2022	4000-2023-059	July 7, 2023

# **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 use zones, as defined in Schedule C of 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 and 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 MAP**

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

<ul style="list-style-type: none"> <li>• Coastal Buffer (30 m)</li> </ul>	<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"> <li>• Watercourse</li> </ul>	
<ul style="list-style-type: none"> <li>• Watercourse Buffer (15 m)</li> </ul>	
<ul style="list-style-type: none"> <li>• Intermittent Stream</li> </ul>	
<ul style="list-style-type: none"> <li>• Indeterminant Stream</li> </ul>	
<ul style="list-style-type: none"> <li>• Waterbody (excluding wetlands)</li> </ul>	
<ul style="list-style-type: none"> <li>• Waterbody (excluding wetlands) Buffer (30 m)</li> </ul>	
<ul style="list-style-type: none"> <li>• Wetland–High protection</li> </ul>	
<ul style="list-style-type: none"> <li>• Wetland-Medium protection</li> </ul>	
<ul style="list-style-type: none"> <li>• Wetland-Low protection</li> </ul>	
<ul style="list-style-type: none"> <li>• Wetland Buffer (15 m)</li> </ul>	<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"> <li>• Floodway (1:20 year)</li> </ul>	
<ul style="list-style-type: none"> <li>• Floodway Fringe (1:100 year)</li> </ul>	<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"> <li>• Steep Slope (&gt;25%)</li> </ul>	
<ul style="list-style-type: none"> <li>• Steep Slope Buffer (10 m)</li> </ul>	

**(Development Regulations Amendment No. 23, 2022)**

**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 30.0m buffer will be established from the top of cliff.
- 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) 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 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 include 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'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 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 habitat are affected, approval shall also be required by 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 in watercourses and within the watercourse 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 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 (10.0) 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 will 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 building 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 in 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 WRMD updated Flood Risk mapping published in 2015.

The Floodway and Floodway Fringe area 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).

Application 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 m<sup>2</sup> of greater; and,
- Low protection: an isolated wetland that has an area less than 2,500 m<sup>2</sup>.

Wetlands means land that has the water table at, near or above the land surface and include 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 ditched, mechanical disturbance of the ground, alteration of normal water level fluctuations, infilling, graining, dredging, channelization, and removal of vegetation cover and/or organic matter on a wetland for social or economic benefits, or the making of any changes 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, aesthetics 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)**