

## MODL Public Correspondence: Coastal Protection - June 13, 2024

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6/5/24, 1:50 PM

RE: Coastal Protection question - Rosemary Young - Outlook

## RE: Coastal Protection question

Gordon Prince [REDACTED]

Fri 5/31/2024 1:09 PM

To: MODL Planning <planning@modl.ca>

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Also – what would happen if someone were to:

1. Get development permit with Vegetated Buffer (fir trees)
2. Get building permit
3. Finish construction, including occupancy permit
4. Then clear the trees between the house and the shoreline after everything's been inspected.

I'm also assuming that existing Vegetated Buffers on already developed properties do not have Vegetated Buffer regulations apply to them. Is that correct?

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**From:** Gordon Prince [REDACTED]

**Sent:** Wednesday, May 29, 2024 9:52 AM

**To:** planning@modl.ca

**Subject:** RE: Coastal Protection question

I have a couple of follow-up questions.

It looks like trees can be cut to the lesser of 25% of 10 metres of water frontage. On a lot that is several hundred metres of shoreline, with the house > 30 metres from the top of the bank along the shoreline, there's not going to be much view with a 10 metre gap in the trees, is there. Could the language be changed to the GREATER of 25% of the shoreline?

If I already have a house with trees between the house and the coastline, am I allowed to cut down some of those trees as they grow into the view?

Am I allowed to trim shrubs at the front of the house if they are within 15m of the shoreline?

Am I allowed to cut down alder bushes that grow every year and block my view from the deck to the ocean if they are within 15m of the shoreline?

I don't see anything in the documents on the web site about these issues. Am I grandfathered in on all of them?

Perhaps there should be details of the regulations' intentions so everything is not left to the discretion of the planning officer(s).

Thanks for your thoughts on these issues.

6/5/24, 1:50 PM

RE: Coastal Protection question - Rosemary Young - Outlook

**From:** Gordon Prince [REDACTED]  
**Sent:** Wednesday, May 29, 2024 6:22 AM  
**To:** 'planning@modl.ca' <[planning@modl.ca](mailto:planning@modl.ca)>  
**Subject:** Coastal Protection question

Good morning. I was at the LaHave meeting last night. You guys were all well prepared. Good presentation, good Q&A session, good work printing out the large maps. Good work all around.

One comment, though: instead of 3.97m elevation requirement, why not make it 4.00m? 3.97m makes people think metric is difficult. Just an observation.

I bought coastal property 25 years ago and built a home on the land. I'm wondering if this would be allowed under the new regulations (I understand the existing structure is grandfathered in). So here's the question:

If I own several acres of coastal property that is now covered in 50 year old forest (mostly fir, but some spruce and mountain ash mixed in) and wanted to build a house on the property, and I site the house 30m back and 4m above the shoreline, would I be allowed to clear trees that stand between my new house and the shoreline? Is forest vegetative buffer? Can I cut down some of the trees but not all? How would that work?

Thanks.

Gordon Prince \* [REDACTED]

**FW: coastal zoning.**

Kacy DeLong <Kacy.Delong@modl.ca>

Thu 5/16/2024 4:28 PM

To: Reid Shepherd <Reid.Shepherd@MODL.CA>; Ella Gindi <Ella.Gindi@MODL.CA>; Jeff Merrill <Jeff.Merrill@modl.ca>

Cc: Doug Cleveland [REDACTED]

Hi Planners,

Here's a letter I received from a resident. Mr. Cleveland has been following the coastal zoning proceedings closely and shared his thoughts with me on the first reading. Please include his letter in the file of public input.

Kacy

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**From:** Doug Cleveland [REDACTED]

**Sent:** Wednesday, May 15, 2024 11:31 AM

**To:** Kacy DeLong <Kacy.Delong@modl.ca>

**Subject:** coastal zoning.

**CAUTION:** This email originated from an external sender.

Hi Kacy

I wanted let you know that I am very disappointed in the fact that you and the council have voted to go with stricter vertical setbacks. This new setback will result in more property not being able to be developed unless perhaps a large amount of money is spent to bring it up to the requirements and thus more hardship for people. This will mean financial losses for coastal property owners in various ways. Have you explained this to property owners in your district? This will not stop erosion of the coastline. Have you explained that the setbacks have been developed from hypothetical models that are being contested by other climate scientists. Have you explained that there is a 95% probability that the rise in sea level that you suggest will not happen. Yet in spite of this you are taking the right for people to build on their property away from them thus causing financial and no doubt emotional stress.

As well the 30 m setback for wetlands regardless of topography makes no sense. You are making it very difficult for people who own property to have the right to build on their property.

Regards

Doug

Re: Private and confidential statement to MODL planning team and councilors re: coastal protection attached

Sharon Charlto [REDACTED]

Thu 6/6/2024 3:29 PM

To:MODL Planning <planning@modl.ca>

 1 attachments (2 MB)

Revised Paved Paradis Put Up a Parking Lot (2).pdf;

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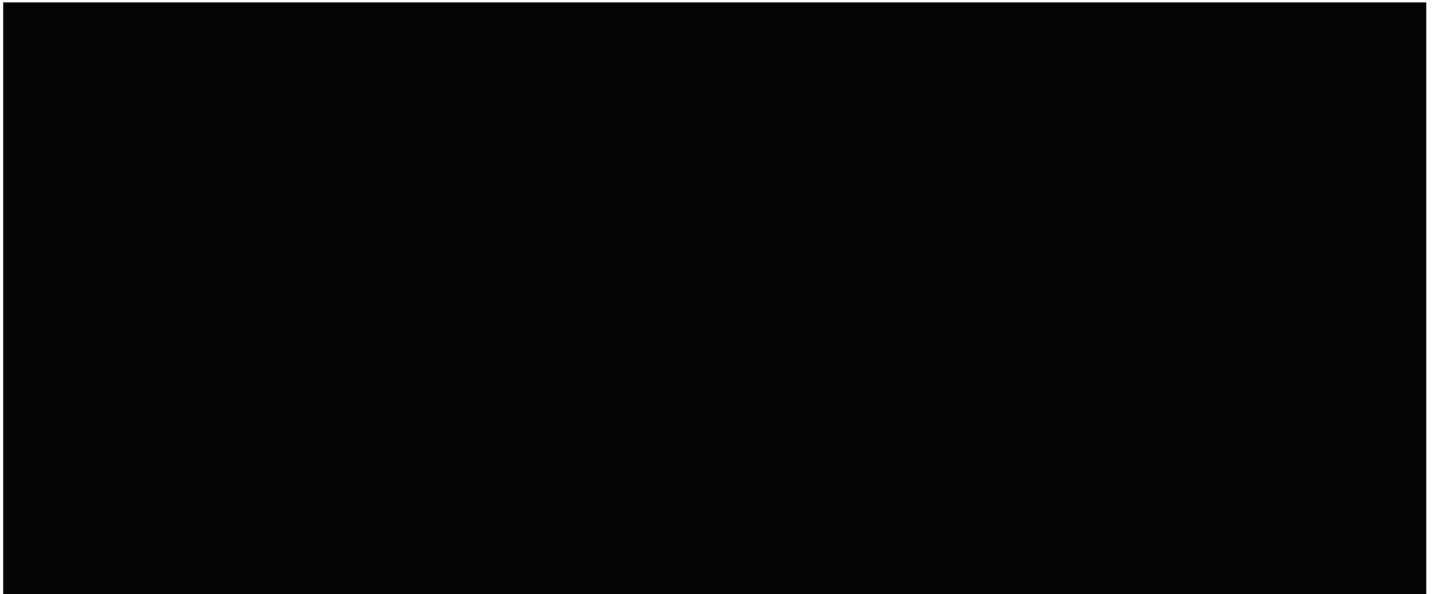
CAUTION: This email originated from an external sender.

Hello Planning Team, Mayor and Council.

Please accept my revised statement re: Coastal Protection I have added a few extra photos that you may find useful.

I give approval to share the document at the Public Open House on June 13th

Thank you for your consideration  
Sharon



## **Paved Paradise and Put Up a Parking Lot**



I am writing this letter to show my support for the Municipal Land Use Bylaw/Coastal Protection Regulations.

As a long time, resident on the Green Bay rd, Petite Riviere, I have witnessed drastic changes to the shoreline, roads and community cohesiveness.

Over the past 40 years I have witnessed the ocean coming closer and closer to properties and causing damage to sand dunes, properties, roads and bridges. Unfortunately, this is going to continue, and will worsen.

The MODL planning team has undergone extensive scientific research, collaborated with scientists and specialists in the field and engaged the municipality residents. Through their planning efforts and community involvement the team has developed an plan that has exceeded expectations. They have done their due diligence.

It is unfortunate at this point that there is still a need to advocate for the Municipal Land Use Bylaw/Coastal Protection Regulations. Those not in support need to recognize that the planning team has put together an objective plan that was developed with the most up to date scientific research. Any individual who does not support the Land Use Bylaw and Coastal Regulations because they feel that common sense will prevail, is very out of touch with human nature. If common sense prevailed in the first place, then we would not have a need for these Bylaws and Regulations. It is due to those, who feel they can do as they please, that we need the Bylaws and Regulations enforced.

Three years ago, the Sandy Toes RV Park was placed in the sand dunes on the Green Bay road. At that time, trees shrubs and dune grass were removed and an RV pad was installed. During high rains, storms, and Hurricane Lee storm surge, the strip of road running along the RV park now floods. This does not only affect the seasonal RV campers but also affects permanent residents on the road that need to traverse the road. (Green Bay Road is a dead end road, and there is no other egress to the main road). The flooding along the RV park strip during and after hurricane Lee made it inaccessible to emergency vehicles and residents living beyond the trailer park. (Previously, the dunes/trees would absorb/filter the water and keep it from flooding the road).

When the park was erected the RV owners were informed that they had to share one path through the dune grass, now over time multiple paths (5 for 7 trailers) to the beach have been made. Each path provides a channel for waves during storm surge thus adding to the flooding. Last week one of

my neighbors had to inform one of the trailer owners that whipper snipping the dune grass next to their trailer was detrimental to the environment and assists flooding to the adjacent road. The resident stated that the RV Park owner gave him permission to do so.

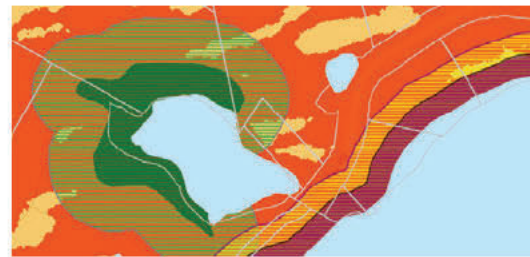


Originally there were 7 trailers on the RV pad and it is my understanding that each trailer lot would allow one vehicle. Over the past few weeks, the owner of the RV park has removed trees, shrubs, grass and filled in the adjacent property (that neighbors a turtle pond) to allow for extra parking of cars. What once was only trailers and cars, now there are sheds too.



Extra parking pad for RV owners additional cars, due to sheds being installed on the sand dunes.

Fill started to the adjacent turtle pond.



If anyone thinks that this development will end based on common sense, then they are incredibly naive. There are individuals who know and understand the devastating effects of mother nature and the effects of removing sensitive dune grass (the same RV park owner installed a sign closer to their permanent residence that states, “Stay Off the Dune Grass”) and still will do as they please. The developers of this RV Park started with 7 RVs each lot allowing one vehicle, now it has grown to the RV owners installing permanent sheds and having multiple cars therefore the need for additional parking and the loss of sensitive environment. (Since the car parking pad has been installed, we have not witnessed a single turtle in the pond, where normally we see multiple turtles each time we walk by).

As an invested property owner I am concerned about future development on sand dunes, the destruction of sensitive ecosystems and damage to the roads and infrastructure in our community. The past few weekends I have witnessed multiple earth moving vehicles, dump trucks and many RVs traveling along the road. The road is in horrendous condition to begin with and is getting worse day by day. I have witnessed rock walls installed and many of the beautiful beaches have become inaccessible to the residents as well as the public. The Petite Riviere community relies on beach goers, provincial park tourists and seasonal resident dollars to keep the infrastructure afloat. Without tourists and visitors to the beaches we will lose our general store, restaurant, bakery, pizzeria etc.

The development of the RV park and building of armored walls has caused a lot of anger in the community. What was once a very friendly and neighborly community is now a community of individuals who do not get along, are not cooperative and definitely not collaborative. Tim Houston stated that neighbors need to get along and cooperate to find a solution to coastal issues and

development in their community. You only need to spend a day on the Green Bay Road and speak with the residents to find that this is not a reasonable solution.

I commend the MODL councilors who have shown support for the Land Use Bylaw/Coastal Protection Regulations. It is an incredibly difficult decision and I know you have not taken this lightly. I feel you can take relief in knowing that future generations will be grateful that you made your decision based on logic, science, and sound reasoning. For those councilors who are basing their decision on emotions (not wanting to tell individuals that they cannot build on their property that they worked for years to purchase), I welcome you to visit the residents and their properties on the Green Bay road and witness the effects of not having coastal regulations can do. Please let's not allow what has happened in Green Bay to happen to other parts of the municipality.

We are not reinventing the wheel here. The province has had zoning laws and building codes in place for many a decade now, this is not new. Land use by-laws are put in place for a reason, to promote orderly and planned development within a community and to prevent conflicting land uses and maintain the overall character of an area. (You would not be allowed to place an RV park on the boardwalk in downtown Halifax). Coastal building regulations ie. Building Codes are the minimum design and construction requirements to ensure safe and resilient structures. The codes reduce casualties, costs, and damage by creating buildings designed to withstand disasters. There are changes/amendments to building code yearly, to improve energy efficiency, sustainability, to make buildings more accessible, adopt improve fire protectant materials, and to incorporate climate change needs.

There are countries all over the world that have adopted Coastal Policies, many of which are receiving rewards for their coastal policy endeavors, (check out the list of nominated countries with the World Future Council/**2012**), I am not asking you to do anything that has not been done before. Truthfully, we are a little archaic with all of this.

<https://www.worldfuturecouncil.org/five-countries-ocean-coastal-policies-shortlisted-2012-future-policy-award/>

In closing, I thank the MODL planning team, Mayor Bolivar-Getson and the supporting councilors for all the hard work that has gone into developing the Bylaws and Coastal Protection regulations. I know this has not been an easy task.

Attached are images of the Green Bay road during and after Hurricane Lee.



Dune blowout. Paths made in the sand dunes, allow for channels of water to spew onto the adjacent road.



Damage to the Green Bay road bridge.



Damage caused from the armoured wall to the Green Bay rd.  
Notice the large sheets of asphalt torn from the road.



Waves went in behind the armored wall removed sand, and compromised the wall.



The sand dunes used to extend to the foot of the stairs, approximately 8 feet of sand dunes lost.









Dune blowout, storm surge depositing seaweed, grass and debris on neighboring road and lawn.





Sand dune blow out, and storm surge causing flooding on neighboring property.



Storm surge on road and to neighboring property.









## Submission to Council - Coastal Protection regulations

Derek Purcell <[REDACTED]>

Mon 6/10/2024 2:02 PM

To:MODL Planning <planning@modl.ca>

Cc:Derek Purcell <[REDACTED]>

 1 attachments (34 KB)

13 Jun 24 Submission.pdf;

You don't often get email from [REDACTED] [Learn why this is important](#)

CAUTION: This email originated from an external sender.

Please accept this written submission for the Public Hearing on the subject regulations.

Regards

Derek Purcell



To: Mayor and Council of the Municipality of the District of Lunenburg

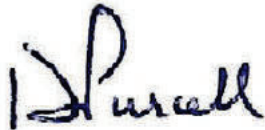
From: Derek Purcell, [REDACTED] Pleasantville, [REDACTED]

Subject: Second Reading of Coastal Protection Regulations

I am grateful and impressed by the work of the Planning Department on the Coastal Protection regulations for our Municipality. The attention to detail, the patience and perseverance displayed by staff in explaining these recommendations to Mayor, Council and the public was superb throughout the entire process. Moreover, the well researched, logical, common sense and sound scientific basis of their recommendations to the Planning Advisory Committee was clear.

My full support lies with the staff recommendations as made to the Planning Advisory Committee in October 2023. The subsequent Municipal political process has resulted in a diluted version of those recommendations but they are still much better than the tepid request by the Province to residents to "do the right thing" when it comes to Coastal Protection.

I urge Council to pass the proposed regulations at Second Reading.

A handwritten signature in black ink, appearing to read "D Purcell". The signature is written in a cursive style with a large initial "D".

## Anna Giblin

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**From:** Daphne Hayward [REDACTED]  
**Sent:** June 10, 2024 9:03 PM  
**To:** MODL Planning  
**Subject:** Municipal-wide land use by-law regarding coastal protection

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Dear Sir/Madam,

The following is my input regarding the proposed land use bylaw for the meeting on June 13, 2024. Please reply to this email so I know that you have received this email.

1. I believe every landowner in the area affected by your proposed by-law should be consulted in person/by registered mail. Not all people are reached by your social media posts. It should be these people, whose properties will be impacted by this proposed by-law, that should have the strongest voice in making decisions on this by-law.
2. I don't believe the municipality has the right to dictate how or where a person can build or not build on a property they own. If the property owner wishes to build in flood area, let them have at it. It is their property
3. I believe this proposed by-law is just another money grab by the municipality and serves no purpose other than to give the municipality more power over property owners. It's not their business.
4. Concerns over building in/on environmentally fragile areas (dunes, marshes, wetlands, etc.) should already be covered by the Department of Environment, and do not need to be duplicated by the Municipality.
5. If, by chance this by-law passes there should be grandfathered in clauses for rebuilding houses on foundations/sites where previous houses were built.
6. There is a huge difference between destroying sand dunes or marshes to build a wall or a house and building a house on a property close to the water that affects neither of those things.

I see this proposed by-law as just another attempt by government to infringe on the rights of taxpayers in this municipality.

Yours truly,  
Daphne J. Hayward  
[REDACTED]

West Dublin NS  
Sent from [Mail](#) for Windows

## Anna Giblin

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**From:** Daphne Hayward <[REDACTED]>  
**Sent:** June 10, 2024 9:15 PM  
**To:** MODL Planning  
**Subject:** municipal-wide by law regarding coastal protection

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**CAUTION: This email originated from an external sender.**

Dear Sir/Madam,

The following is my written input regarding the above for the meeting on June 13, 2024. Please reply to this email so that I can ensure it was received in time for this meeting.

1. No decision on this matter should proceed until each and every coastal property owner is consulted with by MODL;
2. It is absolutely unfair that MODL is giving people who do not own coastal property and in so opportunity to help dictate the use of these privately owned coastal properties;
3. Every coastal property is different. The new proposed process does not give an opportunity for coastal property owners with special circumstances beyond MODL's proposed zoning laws an opportunity to appeal. This is an absolute infringement of our rights. It is wrong.

I have lived on the ocean for 62 years and fished for 46 of those years from the same property. I am dead set against MODL taking away my rights, as a long-time tax payer, to use my property as I see fit. A grand-father clause needs to be included in this proposed by-law to protect long-time residents and extended family.

Until all of these issues are dealt with I say an Absolute NO to your proposed By Law concerning Coastal Protection.

Yours truly,  
Milton W. Bush  
[REDACTED]  
West Dublin NS

Sent from [Mail](#) for Windows

## Anna Giblin

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**From:** Bob Clark <[REDACTED]>  
**Sent:** June 11, 2024 8:08 AM  
**To:** MODL Planning  
**Subject:** Coastal Protection Regulations

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Please consider the following comments prior to moving forward with the proposed Coastal Protection Regulations by MODL.

After following this project since its inception I would like to say that I do not feel that MODL is listening to its residents, or should I clarify this by saying residents who are still not in agreement with the MODL recommendations.

During several council meetings the following comments were made by some of your councilors, and I do agree with them fully.

1. That MODL could be viewed as "Cherry Picking" in reference to the removal of the tidal rivers. Which I feel certainly was done and so did the resident that spoke at the latest virtual meeting.
2. I believe that it was the Deputy Mayor who suggested that residents who own coastal properties be contacted directly advising that their properties will be impacted by these proposed regulations and how. I felt this was a very good and valuable suggestion, but I did not feel MODL reacted to her suggestion in a positive manner. Unless my property is not considered "Coastal", which I doubt, this suggestion was ignored by MODL which was a shame as these individuals have the most to either lose or gain depending on their views of the proposal, which I feel would have given MODL valuable information in addition to what had been received at Open Houses and other feedback forms/methods of feedback.
- 3, The comment was made by a counselor at another meeting "Is MODL rushing into this Coastal Protection Project due to the recent activity at Crescent Beach and Cherry Hill, as this was not a priority item prior to this by council". Again, I have to agree with this comment as I personally feel that this is the case as well.

I can only speak from our experience as owners of the land in Cherry Hill where we are preparing to lease land to seasonal RV sites. Our counselor has very much chosen to side with people against us and our personal choice of what we choose to use our land for even though we have followed all the required rules and regulations in place. Our counselor has never "ONCE" reached out to us to understand our side of the issue but has fully supported our Neighbours who have conducted themselves in a "Shameful Fashion" including lying to council directly at their presentation and on numerous social media platforms. We listened to their presentation and slide show as well as their "Protect Nova Scotia's Coastline, The Podcast" in which two of your staff took part in and again further lies were spread by two hosts. We feel MODL should be more careful when taking part in such public information sessions that the information being presented to them is accurate and by having met with us as resident of District


One and owners of the land in question perhaps some of the mistruths could have been corrected had the counselor not picked "sides" and remained neutral on the disagreement.

In closing we would like to encourage MODL to give further thought on moving forward with this motion and seek input directly from Coastal Property owners as they are and will be the greatest impacted by councils' decisions if this is implemented.

These past few years have been very difficult to all residents of Nova Scotia with the pandemic lockdowns and loss of incomes to many residents, not to mention the current housing crisis. As with many individuals who invest in land both coastal or not they did so as an investment to assist them down the road with their financial goals/needs. MODL and these proposed regulations are going to have a major impact on the owners, and this should be a major consideration before moving this motion/regulation forward.

In closing, I hope and pray that each and every one of you are never placed in this position or told that your form of financial investment has been lost or taken away from you, like this proposed new policy/regulation will indeed be doing to some of your community residents.

Regards,  
Bob and Dana Clark

  
Cherry Hill

## Anna Giblin

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**From:** Jacqueline Cohen <[REDACTED]>  
**Sent:** June 11, 2024 6:37 AM  
**To:** MODL Planning  
**Subject:** Coastal Protection

[You don't often get email from [REDACTED]. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

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We support the work of the municipality for establishing regulations to preserve our coastlines and wetlands. This should have been done by the Provincial Government by proclaiming the Coastal Protection Act . Our area is vulnerable to over development , loss of habitat for wildlife, coastal trees and vegetation. At a recent meeting, there was resistance to the idea of private property being subject to building limitations. The choices that people make often impact the neighbouring properties, the roads we all use, public access to beaches and crown land, and the beautiful natural environment that attracts people here in the first place. In the past two or three years, the area has already lost well loved places to private development. This is a special place and worth preserving. Thank you for your work. J. M. Cohen

**Anna Giblin**

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**From:** Robert & Karen Falls [REDACTED]  
**Sent:** June 11, 2024 10:28 AM  
**To:** MODL Planning  
**Subject:** Coastal Protection Regulations

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Dear Mayor & Council:

I am submitting a written statement in support of your proposed Coastal Protection regulations. As a resident of Crescent Beach for the last 45 years I have witnessed great change and devastation along our coast line. Climate change combined with human development and intervention have often exacerbated this change. Land use rules based on sound science and a changing climate are needed to ensure the environmental protection of our unique and sensitive coastal areas. I was disappointed in your decision to remove tidal rivers from the coastal zone. This removal combined with reductions in setback requirements from your initial proposal, have left some coastal areas unprotected. I do however believe that these new rules are designed to provide protection for people and property from erosion, flooding, storm surge and sea level rise.

Unfortunately in a culture that regards land as a commodity rather than as a resource there is resistance to rules and changes that affect land use.

I encourage you to provide the leadership required to implement these new regulations and help to ensure that our unique coastal areas are protected for generations to come.

Yours truly,

Karen Dempsey  
Cc Leitha Haysom

Att. April Lohnes,

Ann Caverzan <[REDACTED]>

Tue 6/11/2024 1:27 PM

To: MODL Planning <planning@modl.ca>

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Written submission to MODL Council , re: Local Coastal Action Plan ,  
Public Hearing June 13 ,2024.

From Ann Caverzan & concerned residents of Maders Cove & area.

Given that:

1. The MODL is aware of an instance of nearshore infilling which, through erosion and poor design and implementation, has resulted in the displacement of silt, sand and gravel into a recognized, environmentally sensitive wetland (Westhaver's Pond) and;
2. The Activities Designation Regulation made Pursuant to the Nova Scotia Environment Act, Section 5(A)(2) requires an Approval under that Regulation to be obtained when an activity which alters a wetland is undertaken and;
3. The activity referred to in point 1 above was conducted without the benefit of an Approval under the above-mentioned Activities Designation Regulation and;
4. The activity referred to in point 1 above was conducted within the boundary of a roadway as specified in The Act Respecting Public Highways, Section 15(1) and;
5. The activity referred to in point 1 above was conducted in such a manner as to obstruct a culvert under a public highway in contravention of The Act Respecting Public Highways, Section 40(1)(b and d) and;
6. The activity referred to in point 1 above was conducted without the benefit of Work Within Highway Right-of Way Permit, pursuant to The Act Respecting Public Highways and;
7. The activity referred to in point 1 above was conducted in such a way that a significant portion of the the fill was permitted to erode into a wetland protected by MODL through having been zoned Environmentally Sensitive;

Therefore,

Will the MODL take such action as:

- (a) strongly encouraging responsible provincial agencies to enforce their regulations so as to rectify this damage and;
- (b) encoding in bylaws measures that will deter such damage from occurring in sensitive coastal and wetland environments, setting a precedent for implementation of any coastal protection bylaws which may be enacted in the future?

Sent from my iPad

Tuesday June 11<sup>th</sup>,2024

To Mayor Bolivar Getson, and  
Municipal Councillors

Regarding proposed changes concerning coastal protection, I would like to express the following concerns:

With Global warming, rising sea levels and continued coastal erosion being a fact, I am failing to see how proposed changes are going to do anything constructive to prevent this. The proposed changes MODL are considering will only increase bureaucratic red tape, building and development costs while limiting landowners rights to develop private property as they see fit. The only benefits I can see here are increased revenue fees going to the Municipality and various contracting parties generating additional revenue. By that I mean additional "specialists" that private landowners will be required to hire to satisfy new proposed requirements.


Rather than Council enacting autocratic mandatory changes that will further erode the general public's perception and opinions regarding the wisdom of MODL management, I would like to suggest that instead a softer approach be taken. Information, guidelines and recommendations could be provided by the Municipality to accompany any coastal development building permit application which would put the detailed specification decisions squarely on the shoulders of the landowners affected. The important caveat being that any person doing a development being made aware of potential future pitfalls and that MODL assumes no liability with builders building at their own risk.

With respect to "environmental concerns" the current regulations that fall under the department of the environment and DFO are doing their job with no further meddling required by MODL.

Aside from a small vocal minority advocating for draconian changes to be made by MODL, I have not spoken to one person who feels proposed changes will have any constructive effect other than to alienate people who have worked hard to acquire coastal land while paying Municipal taxes on that land which ironically is being used to bring about changes that are not wanted.

It is my sincere hope that the points made in this letter will be provided to all Municipal Councilors with an effort to have an unbiased "common sense" approach made when determining proposed legislation on this topic.

Respectfully Submitted,  
Bernard Wentzell



## Support for Coastal Protection regulations

[REDACTED] <[REDACTED]>

Tue 6/11/2024 3:25 PM

To: MODL Planning <planning@modl.ca>

You don't often get email from [REDACTED]. [Learn why this is important](#)

**CAUTION:** This email originated from an external sender.

To: Mayor Bolivar-Getson

CC: MODL Councillors, MODL Planning Department

I would like to voice my support for the new coastal protection regulations proposed by the Planning Department and I encourage the MODL Council to do the right thing for the coast. I have followed this process from the start and I want to thank you and your team for your tenacity and hard work to bring coastal protection to our municipality. I hope that our Council understands the importance of this action and delivers strong support for the new regulations.

Sincerely,

Heather White

Kingsburg, NS

## Anna Giblin

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**From:** Jacqueline Cohen [REDACTED]  
**Sent:** June 11, 2024 6:37 AM  
**To:** MODL Planning  
**Subject:** Coastal Protection

[You don't often get email from [REDACTED] Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification> ]

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We support the work of the municipality for establishing regulations to preserve our coastlines and wetlands. This should have been done by the Provincial Government by proclaiming the Coastal Protection Act . Our area is vulnerable to over development , loss of habitat for wildlife, coastal trees and vegetation. At a recent meeting, there was resistance to the idea of private property being subject to building limitations. The choices that people make often impact the neighbouring properties, the roads we all use, public access to beaches and crown land, and the beautiful natural environment that attracts people here in the first place. In the past two or three years, the area has already lost well loved places to private development. This is a special place and worth preserving. Thank you for your work. J. M. Cohen



Kingsburg Coastal Conservancy  
Box 2, Site 1A  
Rose Bay, Nova Scotia B0J 2X0  
June 6, 2024

Ms. April Whynot-Lohnes  
Municipal Clerk  
10 Allee Champlain Drive  
Cookville, Nova Scotia B4V 9E4

Dear Ms. April Whynot-Lohnes,

This is a written submission by the Kingsburg Coastal Conservancy for the Public Hearing on Amended Municipal Planning Strategy and the New Municipal-Wide Land Use By-Laws.

The Kingsburg Coastal Conservancy, incorporated in 1995, has as one of its core values to protect the coast and its associated wetlands along with other ecologically sensitive areas on the Kingsburg Peninsula.

Considering the pressure for development and sea level rise that would threaten people's homes and endanger natural habitats, the Kingsburg Coastal Conservancy supports the Municipality of the District of Lunenburg in their efforts to control development in these areas.

Thank you for taking on this initiative on behalf of all of us.

Sincerely,

*Janet Peace*

Janet Peace

Chair, Kingsburg Coastal Conservancy Association



## Comments on Proposed Regulations

John and Ruth Reedman [REDACTED]

Tue 6/11/2024 8:56 PM

To:MODL Planning <Planning@modl.ca>

 1 attachments (391 KB)

coastal protection.pdf;

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**CAUTION:** This email originated from an external sender.

I live on the coast in Feltzen South and the short attached PDF file has some comments regarding the proposed regulations.

John Reedman

## COMMENTS ON PROPOSED REGULATIONS GOVERNING COASTAL DEVELOPMENT

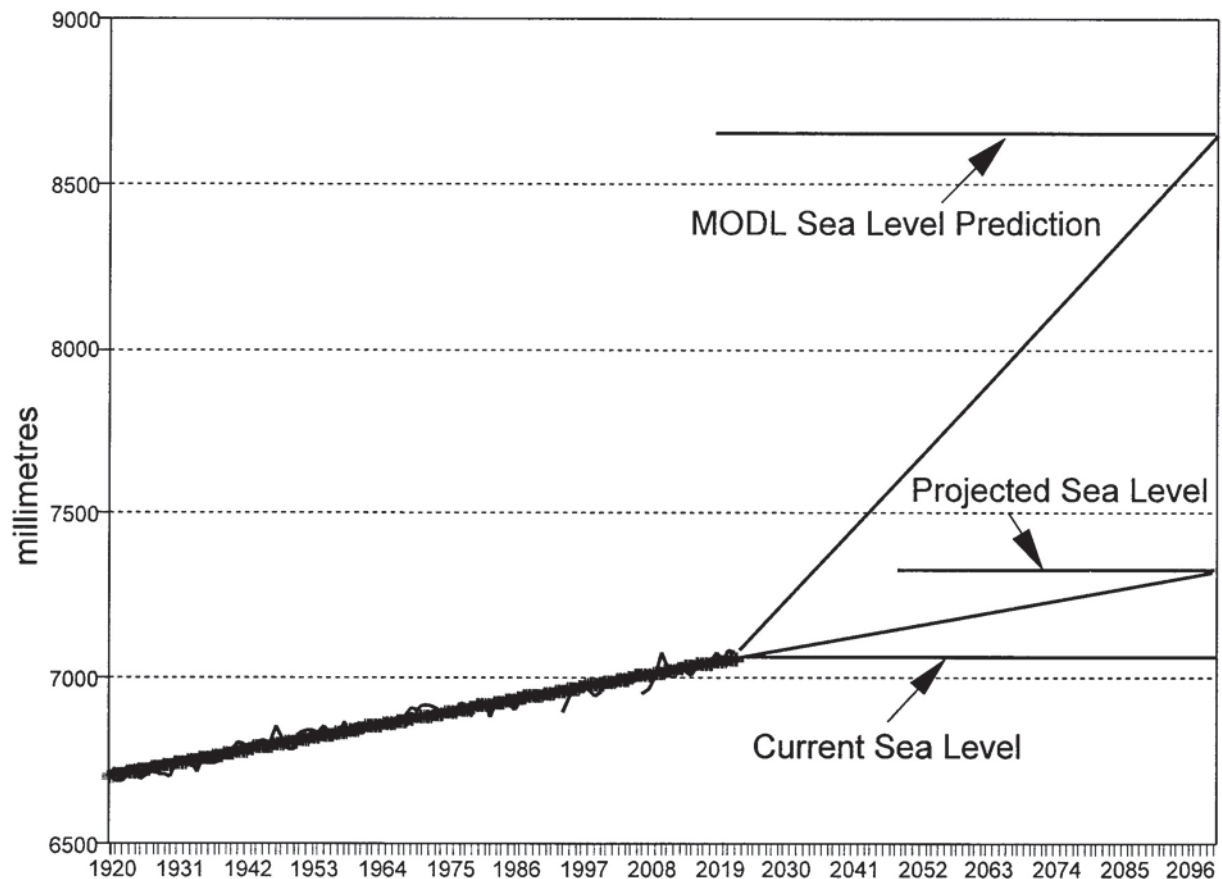
### Facing Future Perils of the Sea

While the MODL Coastal Protection Regulations proposed to control and restrict building along sections of the coast subject to possible danger from future sea level rise are reasonable in principle, it is important that proper allowances be made for site location since there is a big difference between a site exposed to the open ocean and a site on a well protected and sheltered bay. Of course, all coastal sites would eventually be affected if sea level rises high enough, but the question remains how far into the future should we plan - 50 years, 75 years, 100 years? The regulations are based on a sea level rise of 1.57 metres by 2100. By adding 0.77m for the maximum high water mark and 1.63m for a maximum surge recorded for hurricane Juan in 2003 the proposed regulations arrived at a total possible danger rise of 3.97m by 2100. However, I believe such a rise anticipated by 2100, while possible, is excessive and highly improbable as explained below.

### Measuring Sea Level

As a retired geologist, I have been studying sea level around the world for many years from long-term tide gauge data dating back to the 19<sup>th</sup> century in addition to satellite data available over the past twenty years or so. With land masses rising or falling in different parts of the world, tide gauges record the relative change in sea level at each site so that apparent sea level may be rising or falling depending on location. Along the Baltic coasts of Sweden and Finland, for example, apparent sea level has been falling since the late 19<sup>th</sup> century due to post-glacial rebound. This is also true of the northwest Pacific coast where there is only slow rise at Vancouver, Victoria and Prince Rupert in British Columbia and large falls in apparent sea level at Sitka and Juneau on the Alaska coast. At locations where the land is sinking there may be large apparent rises in sea level such as at Galveston, Texas where apparent sea level has been rising at about 7mm per year since 1909. Thus, although true sea level, known as eustasy, is estimated to be rising at about 2mm per year, there may be major departures both up and down as explained so that people on the Baltic coast of Sweden have no need to worry about sea level rise whereas on the gulf coast of Texas it may soon be of future concern.

There are numerous tide gauges along the east coast of North America from Newfoundland to Florida with the oldest at New York dating from 1856 and all indicate that relative sea level has been rising at an average of 3.65mm per year. In Nova Scotia there are three gauge sites: Halifax harbour since 1896, Yarmouth since 1965 and North Sydney since 1970. As the land along the entire Atlantic coast of North America is gradually sinking, there will be a gradual incursion of the sea even in the absence of true eustatic change. The figure below shows the recorded apparent sea level rise at Halifax over a hundred year period from 1920 to 2022 with the computed regression line extended to the year 2100. Although the rate of apparent rise may increase, it is clear that there would have to be an exceptionally large increase to reach the level predicted by the proposed MODL regulations in 2100. A marginal increase in the rate of rise is currently indicated by a number of gauges along the Atlantic coast from Newfoundland to Florida, but remains insufficient to reach much beyond the projected sea level shown in the illustration for 2100.



Tide gauge data from 1920 to 2022 at Halifax projected to the year 2100

Personal Experience of Coastal Living

My wife and I currently live in a house we built in 2000 on a small island at the end of Feltzen South road. We have owned the property since 1996 and have lived here year-round since 2001. Due to our proximity to tide water we are very aware of the potential dangers posed by the sea and I have maintained accurate measurements of daily high water for more than 20 years. In that time we have weathered a number of hurricanes without sustaining any damage, though water, accompanied by driftwood and debris, has come up onto the lowest land along the shore and flooded the causeway connecting us to the mainland. The importance of a protected site was driven home by Hurricane Juan in 2003 as we suffered none of the extensive damage that resulted along the sea frontage at Felzen South which is open to Lunenburg Bay and the ocean beyond. Shortly after the event, the damaged timber work and resulting erosion were repaired and bolstered by many truckloads of amour rock installed by the municipality. Hurricane Juan remains the worst we have experienced in terms of high water, though Dorian in 2019, with a slightly lower high water, had a marginally higher surge over the predicted high water mark since it arrived on a neap tide.

John H. Reedman  
 Feltzen South  
 11<sup>th</sup> June 2024

## Written submission to Public Hearing of revised MPS, bylaws re: Coastal Protection regulations

Wanda Baxter [REDACTED]

Tue 6/11/2024 4:15 PM

To:MODL Planning <planning@modl.ca>

📎 2 attachments (828 KB)

Westhaver Pond coastal regs map all layers.png; policy on infilling MGA.png;

**CAUTION:** This email originated from an external sender.

Dear April Whynot-Lohnes, Municipal Clerk, the Municipality of the District of Lunenburg:

I am writing to contribute my thoughts and considerations regarding the proposed Municipal Planning Strategy and corresponding by-laws re: coastal protection. May I first thank the Mayor, the Council and the Planning Department for giving citizens the opportunity for public input, and for moving forward on coastal protection regulation in lieu of provincial regulation.

There are many positives to what is proposed in the planning strategy and by-laws, especially with regard to setbacks and recognition of the need to control coastal development. My main concern, however, about the proposed by-laws is the exception of infilling and rock walls from regulations or inclusion in development permits. I do not think it is possible to address coastal protection effectively without regulating the use of rock walls and infilling, especially when there is evidence up and down the coast of the damaging impacts of unregulated rock wall builds, and unlimited infill at the edge of coastline and wetlands.

One need not look further than Little Crescent Beach and Green Bay to see the damage to both coastline and the community of unregulated rock wall builds and infilling. The impacts of infilling and building rock walls at the edge of projected flood areas, especially adjacent environmentally sensitive habitats, is a key reason coastal protection regulations are needed.

The infilling that has occurred at the edge of Westhaver Pond, an ES zoned wetland as delineated in the Prince's Inlet Secondary Planning Strategy and by-law, can be looked to for an example of exactly why infilling must be regulated by municipal by-law and be included in municipal development permits. It is not enough to state in the current by-law that "no uses" are allowed if a property owner can go ahead and pour infill and "rip rap" at the edge of a sensitive wetland – because infilling is exempt. That is not protecting a wetland.

Further, it is a misnomer to describe rock walls as "minor alterations," as is stated in the proposed new by-law. Drive down highway 3 or anywhere along the coast in our municipality. Walling the edge of the ocean or coastal wetlands is *not* minor.

### 3.4 No Development Permit Required

Despite Section 3.3, a Development Permit is not required for:

- 3.4.1 A development that involves interior renovations of a building that will not add more Dwelling Units or will not involve a change in the use of the building.
- 3.4.2 Minor structures such as retaining walls, children's play structures, hot tubs, cold frames, garden trellises, clothesline poles, dog houses, propane cylinders, and heat pumps.

Section 220 5(g) of the Municipal Government Act clearly states the ability of municipalities to regulate infilling, and I can't implore you enough to take a stand against unregulated infilling and rock walls in our region.

In Maders Cove, what was a spit that extended out into the cove and was habitat for wildlife and a natural flooded area is now surrounded by large rock and has been infilled to create land within the waterbody. Another example is within Mahone Bay where a large rock walled "wharf" has been built out into the bay, infilled, and surrounded with several layers of large rock piled on both sides and around the end. In both cases, these unregulated creations of fortified outcroppings of land change the natural watercourse, eliminate habitat, and create conflict and confusion in the community.



The image above used to be the natural wetland corner of Westhaver Pond. A regular for many years of the beautiful Westhaver Beach across the street, I saw this area naturally flooded many times, and I am aware that it is home to a wide range of wildlife species. The wetland was doing an exceptional job as a sink for both carbon and excess water for many years. It was enjoyed and admired by locals and visitors alike. Because infilling is exempt from development permits, however, this edge of the ES zoned wetland is now infilled with gravel fortified by a rock wall.



This example of what people will do if they are provided a loophole (i.e. infilling exempt) can be used to tighten up existing by-laws so we are really able to protect such invaluable coastal resources. Yes, some people in our

municipality will not like that they are not able to infill and rock wall as they see fit or as they wish. But there are always things you can't do – even if you own the land – and climate change demands that we change.

It is not enough to regulate buildings or establish vegetative buffers "with exceptions." In order to truly protect our shared coast and coastal wetlands, it is imperative that we also regulate infilling - and rock walls. I have heard from the planning department that infilling and rock walls can not be regulated by municipal regulation as per the MGA. I do not believe that is the case, but if it is, then I believe it is the responsibility of our municipal government to request it be given that ability.

The provincial government has handed off coastal protection to municipalities. If municipal governments do not in fact have the "power" to regulate infilling at the edge of coastal wetlands and ocean, then part of this updated MPS/bylaws regulation effort must be to also point out the need for municipalities to be able to regulate infilling and rock wall builds. Coastal protection is not possible without that ability.

I have seen examples of ways this can be done in the background report the planning department provided Council toward the development of the proposed legislation, and I think it is worth looking again at what Chester and Queens County are doing, and what New Brunswick (?! who knew!) has put forward as methods to protect wetlands and coastal areas. The following sections stood out to me as ways we can also implement real protection, either through establishing site specific conservation zones (Westhaver Pond, Kingsburg Pond, Lake Minamkeak are all deserving of such regulation, for instance), or establishing distinct zones where minimal development is permitted.

## New Brunswick zones:

### Province of New Brunswick

#### Key Points

- Three zones approach from most restrictive to least restrictive. Most restrictive is zone A, which is a conservation zone that protects wetlands, marshes, dunes and spits.

New Brunswick developed a province-wide coastal protection policy that has been implemented and carried out through the regulation of Watercourse and Wetland Alteration Regulation and overseen by New Brunswick's Source and Surface Water Management Branch of the Department of Environment and Local Government (DELG). The Coastal Areas Protection Policy aims to achieve several objectives:

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- Reduce the risk of personal injury caused by storm surges and flooding, and to minimize danger to those involved in emergency and rescue efforts during such events.
- Protect provincially significant wetlands (PSW) and ensure that there is no net loss of wetland function for other wetlands.
- Prevent water and wetland contamination from hazardous materials, heating fuel or septic tanks, and to minimize saltwater intrusion into wells.
- Encourage cooperation among local, municipal, provincial, federal governments, and private sector stakeholders in the stewardship and protection of wetlands.
- Maintain coastal areas' buffering capacity to protect inland areas from storm surges and ensure that watercourse and wetland alterations are appropriately considered during design stages.
- Maintain vegetation and wildlife for their ecological value, as well as their role in traditional fisheries and eco-tourism.
- Reduce public expenditures on repairing storm damage to public property such as roads, bridges, and buildings and controlling erosion to protect human-made structures.

The plan proposes three zones intended to protect the coastline:

#### Zone A

Zone A is the most sensitive zone, encompasses tidal watercourses, beaches, dunes, rock platforms, coastal marshes, and dike lands found between the Higher High Water Large Tide (HHWLT) and the Lower Low Water Large Tide (LLWLT), as well as dunes extending beyond the HHWLT. Land that falls within Zone A is highly susceptible to storm surges and the potential for danger and damage is significant. Therefore, fewer development activities are allowed in Zone A. Zone A also has fewer permissible development activities due to the high risk of danger and damage from storm surges. However, certain activities may be allowed with the necessary permits, including public projects, wetland restoration, temporary access roads, boardwalks, erosion control structures, and accessory buildings associated with existing dwellings, provided they meet specific requirements and limitations. Surveying, education, research, and habitat management may also be permitted, if they are temporary and do not involve alterations.

#### Prohibited activities within Zone A

- Infilling and excavation, except for activities allowed as described above.
- Dredging and related activities for disposing of dredged material.
- Quarrying of beaches.
- Construction of causeways, unless building a bridge is not technically feasible.
- Construction of groynes (Rigid structures that extend from a shoreline and are intended to shield the shore from erosion, capture sand, or alter the direction of a current).

## Chester: Environmental Protection Area Designation

To encourage the protection of waterways and other ecologically significant lands, Chester adopted the Environmental Protection Area Designation. Lands within the Environmental Protection Area are subject to strict development regulations and limited approved uses. Within the Environmental Protection Area Designation there are several zones including the Conservation Zone and the Protected Watershed Zone. Chester's Conservation Zone is intended to protect areas of land that are ecologically significant. Uses permitted within the Conservation zone include passive recreation, research, and education. New construction of any kind is prohibited in the Conservation zone unless it is conducted by the District of Chester or is permitted via development permit.

Chester's proximity to the coast increases threats imposed by sea level rise and storm surge. Policies related to sea level rise and the resultant erosion of coastlines include partnering with higher levels of government and community groups to monitor the extent of erosion in the municipality over time, updating infrastructure and maintenance in accordance with continued sea level rise, identifying coastal areas that are at an elevated risk of erosion, and limiting development of any kind in areas that could pose a risk of erosion or flooding in the future.

### Coastal Protection Policies

- Implement protective zoning in ecologically significant areas to restrict development and prevent contamination of important natural resources.
- Require vegetative buffers and setbacks for developments near watercourses.
- Require all development requiring a permit to place all buildings at least twenty (20) m from the ordinary high-water mark of any wetland, watercourse, or water bodies.
- Identify areas at higher risk of impact for sea level rise and limit development in coastal areas.
- Adopt a Coastal Hazard Risk Map in the future to identify areas in proximity to low-lying and sensitive areas such as beaches, dune systems, and coastal wetlands to protect development from storm surge and coastal erosion.
- Consider requiring waivers for any development in the coastal hazard area, which states that developers are aware of the risks posed by climate change and release the Municipality from all liability.

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Finally, I see in the proposed regulations that there is a proposed Coastal Erosion Risk Area, and I wish I had more detail about exactly what the specifications mean. As I have witnessed in the Prince's Inlet Secondary by-laws, leaving things to chance or not as clear as they could be can lead to misinterpretation.

For instance, in the following section of the proposed **MODL bylaw 4.14.4**, there are no sizes attached to "boat houses and slipways", and I can imagine these terms to mean quite different things to different people. The same things with wharves, docks, decks, piers ... Further, permitted development includes vegetation removal as required for erosion control and flood control measures. Again, this kind of statement can be applied in very different ways, and how one person applies this regulation may be something wildly different than what this appears to intend.

**4.14.4 Permitted developments within the Coastal Erosion Risk Area include:**

- (a) Boat houses, fishing gear sheds, docks, decks, wharves, piers, slipways, and other marine related uses;
- (b) Scientific research structures;
- (c) The removal of vegetation and grade alterations necessary for erecting erosion control and flood control measures above the ordinary high-watermark. Natural vegetation must be reinstated when excess vegetation has been removed within the vegetative buffer area;
- (d) Removal of windblown, diseased, or dead trees in hazardous conditions;
- (e) Trimming tree branches to improve the view plane and ventilation, and
- (f) Safety fences not exceeding a height of 1.9 metres.

No one might have imagined that someone would build a boardwalk out across the wetland grasses of Kingsburg Pond, and build what could be interpreted as a boat house at the end of the boardwalk, but there it is. Within a protected wetland. Unimaginable that someone would do that, but they did. Imagine if there were 10 of the same.

I think as this legislation is reviewed and revised, specifications in the by-laws need to be *very* specific, with reasonable sizes and area and "removal of vegetation" limitations and specifications incorporated. Otherwise, removal of vegetation could mean a lot of different things, as could flood control measures.

A last thought, and this is a bit of an aside, but it has occurred to me recently as I hear some people talking about how the use of their property is unfairly limited due to protective legislation (because it has wetland, for instance) but they still have to pay taxes on it. I know it might seem radical, but I wonder if the municipality might consider the idea of giving tax breaks to people who own property (i.e. that contains coastal wetland, for instance) that has significant conservation value, and who maintain over time?

It's just a thought.

Thank you for your effort to protect our coastal resources, and to move forward with coastal protection legislation after the provincial act was shelved. It is a big and important undertaking, and it matters to get it right. I am grateful for the effort, and for the opportunity to share some of my thoughts.

Respectfully,  
Wanda Baxter, M. Env. Design (planning and policy)  
from [REDACTED] Northwest.

**Discretionary content related to the natural environment**

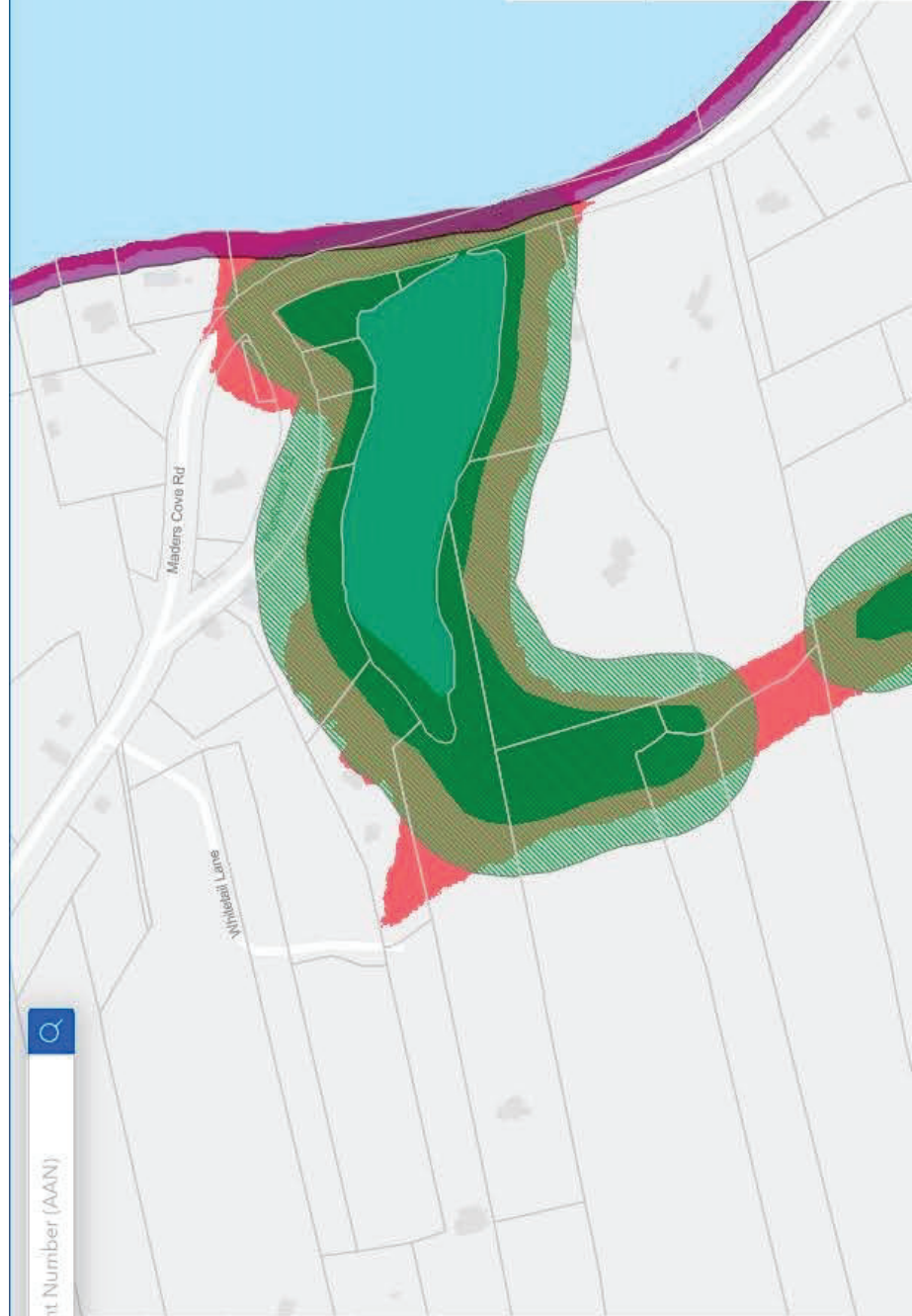
9 A municipal planning strategy may include statements of policy on any of the following:

- (a) climate change mitigation and adaptation;
- (b) protecting the natural environment and biodiversity;
- (c) protecting the coast;
- (d) protecting water supplies;
- (e) identifying, preserving and protecting landscape features;
- (f) stormwater management and erosion control;
- (g) excavating or filling of land, the placement of fill or the removal of soil;
- (h) identifying, protecting, using and developing any of the following:
  - (i) lands subject to flooding,
  - (ii) steep slopes,
  - (iii) lands susceptible to subsidence, erosion or other geological hazards, and [*sic*]
  - (iv) wetlands or other environmentally sensitive areas.

Find address/PID/Assessment Account Number (AAN)



- Coastal Wetlands
- Generalized Vegetative Buffer
- Generalized Erosion Risk Area
- 30m(98ft) Wetland Buffer
- Coastal Flood Risk Area (0-3.97m)
- Designated Coastal Protection Area



- Coastal Wetlands
- Generalized Vegetative Buffer
- 30m(98ft) Wetland Buffer



## Written submission to Council for amended to Municipal Planning Strategy

Jess Myra [REDACTED]

Tue 6/11/2024 4:59 PM

To:MODL Planning <planning@modl.ca>

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CAUTION: This email originated from an external sender.

Attn: April Whynot-Lohnes

[Please find attached my written submission](#) to the council for amendment to the Municipal Planning Strategy and new Municipal-Wide Land Use By-Law. Please confirm receipt.

Many thanks

// Jess

# Written Submission to Mayor and Council for Amended Municipal Planning Strategy

Attn: MODL Planning; Submitted by (Jess Myra) June 2024

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**To Mayor and Council:** Please find below a written submission of two proposals (based on the current [Riverport and District Land Use By-Laws](#)) for the Council's consideration to add to the amended [Municipal Planning Strategy](#). The goal of this document is to contribute to the establishment of Coastal Protection to help guide how development occurs along the coast to protect natural assets. This document includes wisdom from conversations with government representatives and experts in the community like the Department of Natural Resources and Renewables, Department of Environment and Climate Change, Helping Nature Heal, Postech, and my research and experiences as an environmental steward for our coastal property.

## Proposal A

### Goal

Help people to build raised boardwalks in a way that limits environmental impact while still enabling recreation and access.

### Proposal body

*Expand requirements* for developing near a watercourse pursuant to [4.11](#) (page 49/12) of current Riverport and District Land Use By-Law, and boardwalk definition for [4.15.4\(a\)](#) (page 18/14) of the new Municipal-Wide Land Use By-Law. Add a new section to introduce recommendations for raised boardwalk requirements for height and spacing of decking boards to promote sustained light, air, and water access to flora and fauna. Add a new section to introduce *material options* and *installation methods* OR make this information directly available to people by connecting them to community champions<sup>(1)</sup> or associations.<sup>(2)</sup>

### Expand requirements

- Currently: Requirements to develop near a watercourse are not adequate. Consideration of setbacks and removal of vegetation is not enough. Boardwalks need further definition. Raised boardwalks near a watercourse need additional considerations. Coastal boardwalks are at risk of washouts. Flora and fauna require air, light, and water to thrive.
- Suggested: Add requirements to holistically define a boardwalk as raised off the ground when near a watercourse. Include minimum height requirements of 18-24". Angle boardwalks near the coast to prevent washouts. Include ¼" minimum spacing between deck boards to allow sustained light, air, and water to reach flora and fauna below.

### Material options

- Currently: Use of pressure treated spruce, pine, or douglas fir (SPF) wood is standard material choice for raised boardwalks and other outdoor wooden structures. Use of natural rot resistant species or natural preservation techniques are infrequently used and may be unknown as an option.
- Suggested: Expand support of other materials and preservation techniques to increase awareness of options available, or make this information directly available as a resource by connecting people to community champions or associations. For example, hemlock is a local tree species that is naturally rot resistant, plentiful, affordable, and widely available at multiple local lumber mills. Eastern white cedar is another option that is plentiful in the maritimes. Preservation techniques include DIY options like [salting wood with borax](#), [shou-sugi-ban](#) (charring wood), [essential oils](#), or use of natural 'off the shelf' products like [ECO Wood Treatment](#) and [LifeTime Wood Treatment](#).
- Potential for positive impact includes:
  - Reduction in leaching of chemicals into the natural environment.
  - Supporting local businesses and industries.
  - Reducing carbon footprint through sourcing of local materials.
  - Increased knowledge of environmental best practices in the community.

### Installation methods

- Currently: 'Hand powered' installation methods are preferred. For example, digging with a shovel to install a wooden boardwalk post. Use of galvanised

helical piles requires special permission from the Department of Natural Resources and the Department of the Environment.

- Suggested: Adopt galvanised helical piles as an approved and preferred option when site review deems soil conditions are appropriate for use of helical piles<sup>(3)</sup> that effectively leave 'no trace'.<sup>(4)</sup>
- Potential for positive impact:
  - Less soil displacement (no digging needed, more plants stay)
  - Less ground intrusion over time (multi-generational lifespan of ~75 yrs)
  - Less ground compaction (faster install and distributed machine weight)
  - Ideal for soil types that may naturally be in coastal or water-adjacent areas
  - Safer for longer (no rot concerns)

## References

- [4.11 Riverport and District Land Use By-Law](#) ...Development near a watercourse; 4.11.1 Setbacks from Watercourses...; 4.11.2 Removal of Natural Vegetation, Filling or Excavation Near a Watercourse...
- [4.15.4\(a\) new Municipal-Wide Land Use By-Law](#) ...Permitted developments within Coastal Wetlands or the associated vegetative buffers include: (a) Boardwalks or nature interpretation stands;

## **Proposal B**

### Goal

Help people to stay active so they can balance recreation and access with prioritising what is needed for flora and fauna to thrive.

### Proposal body

Maintain exceptions for raised boardwalks to support public and private recreation and access to inland water bodies of current Riverport and District Land Use By-Law and draft Municipal-Wide Land Use By-Law.

### Potential for positive impact:

- Controlled access to otherwise unreachable area(s)

- Additional opportunities for healthy active lifestyles
- Structured recreation (keeps people 'on the path', not trampling the brush)

## References

- [4.2.2. Riverport and District Land Use By-Law](#) ...Environmentally Sensitive (ES) Zone shall be considered a “no build” zone, in which no structures shall be permitted for the intended permitted uses, except for raised boardwalks for trails.
  - [5.1.1. Riverport and District Land Use By-Law](#) ...to provide for public access to the inland waterbodies and the marine environment within the planning area.
  - [4.15.4\(a\) new Municipal-Wide Land Use By-Law](#) ...Permitted developments within Coastal Wetlands or the associated vegetative buffers include: (a) Boardwalks or nature interpretation stands;
- 

## **Footnotes**

1. Community champions - List of local volunteers and champions for environmental stewardship from the community and related businesses that have firsthand experience with best practices for raised boardwalks. For example, I am personally happy to self nominate as a volunteer from the community.
2. Community associations - Local associations focused on land and coastal stewardship to reduce environmental impact. For example, [Ecology Action Centre](#), [Kingsburg Coastal Conservancy](#), [Mahone Islands Conservation Association](#).
3. Soil conditions for helical piles - Soil conditions can be deemed appropriate for helical piles with a test hole done by hand with an auger or with help from helical install company, or via a geotechnical report.
4. Galvanised helical piles - Piles that are 2-3” in diameter (piles labelled as P238 or P315) are generally appropriate for raised boardwalks and small structures. These two sizes are installed with a small machine that is 4’ wide and effectively leaves ‘no trace’ when properly maintained and in good operational condition.

6/5/24, 8:29 AM

Mail - Rosemary Young - Outlook

## Request to "INCLUDE RIVERS" in MODL's new coastal protection land use regulations (REVISED)

Kimberly Harrison [REDACTED]

Tue 6/4/2024 5:01 PM

To: Reid Whynot <reid.whynot@modl.ca>; MODL Mayor <mayor@modl.ca>; MODL Planning <planning@modl.ca>

Some people who received this message don't often get email from [REDACTED] [Learn why this is important](#)

CAUTION: This email originated from an external sender.

Mayor Carolyn Bolivar-Getson  
Councilman Reid Whynot  
MODL Council

Re: Urgent Coastal Protection for Tidal Rivers in Lunenburg County

Dear Mayor Bolivar-Getson, Councilman Whynot and Planning Dept at MODL,

We, a group of 50+, and growing through a petition that was started three days ago, concerned Lunenburg County residents, urgently call upon you to address a critical oversight in the new land use regulations. The exclusion of tidal rivers such as the LaHave, Petite Rivière, and Martins River from coastal protection measures is a grave mistake that disregards compelling scientific data and physical evidence of storm surge and coastline erosion risks.

**It is both irresponsible and neglectful for MODL Council to ignore the clear scientific and provincial mapping data indicating significant threats to shorelines and private properties along these tidal rivers. We respectfully request Council re-examine this subject and make changes to include at risk tidal rivers in these regulations. If Council has any scientific evidence justifying the exclusion of these areas, we request it be made public. In the absence of such evidence, we ask that Council reconsider the current regulations to include protections for these vulnerable areas as originally proposed.**

Failure to act not only endangers people and property but also undermines the protection of wetlands and sensitive ecosystems. Moreover, it could expose Lunenburg County to potential liability, given the Council's awareness of the current and future risks, yet deciding to exclude these tidal rivers from regulations.

We kindly request a response to this letter by June 10th with either the scientific justification for this exclusion, or plans for an amended proposal that includes protections for at-risk tidal rivers. This will allow time to effectively prepare a submission for the Public Hearing deadline of June 11th at 5PM

6/5/24, 8:29 AM

Mail - Rosemary Young - Outlook

Thank you for your attention to this urgent matter. We sincerely appreciate the efforts already made to develop comprehensive coastal protection regulations and trust that you will act swiftly to correct this critical oversight.

Sincerely,

John Duckworth  
Kimberly Landry  
On behalf of concerned Lunenburg County residents



**INCLUDE TIDAL RIVERS IN  
MODL'S COASTAL  
PROTECTION  
REGULATIONS**



[change.org](https://change.org)

June 11<sup>th</sup>, 2024

Mayor Carolyn Bolivar-Getson  
Councilman Reid Whynot  
MODL Planning Dept

**Re: Request to Include Coastal Protection for Tidal Rivers in Lunenburg County Land Use Regulations**

Dear Mayor Bolivar-Getson, Councilman Whynot, and MODL Planning Dept,

Myself, John Duckworth, and Kimberly Landry, representing a group of concerned citizens, are writing to request that tidal rivers be included in the coastal protection land use regulations. The attached 150+ people have signed a petition in the last week to urgently call upon the Council to address a critical oversight in the new land use regulations. The exclusion of tidal rivers, such as the LaHave River Estuary, Petite Rivière, and Martins River, from coastal protection measures is a serious error that disregards compelling scientific data and physical evidence of storm surge and coastline erosion risks. The current proposal's geographical boundaries at the mouths of tidal rivers ignore the scientific evidence and recommendations by MODL staff, which clearly outline these areas as being at risk of coastal flooding and erosion.

It is both irresponsible and neglectful for the Council to ignore the clear scientific and provincial mapping data indicating significant threats to shorelines and private properties along these tidal rivers. We request immediate action to rectify this omission. If the Council has any scientific evidence or, rational justifying the exclusion of these areas, we request that it be made public. In the absence of such evidence, we strongly urge the Council to reconsider the current regulations and include protections for these vulnerable areas as originally proposed.

Quoting the Climatatlantic report on Climate Risk, Responsibility, and Liability for Municipalities,

*"It is important to emphasize, however, that the law's protection for core policy decisions made rationally and in good faith means that municipalities cannot simply ignore problems that are staring them in the face. Burying one's head in the sand is not a rational or good faith response to a problem and is not a prudent approach within this legal framework."*

We are bringing this report to the attention of the Council and the citizens of Lunenburg County to underscore the risks associated with knowingly disregarding the coastal flood risk for tidal rivers. Numerous experts have identified these rivers as susceptible to coastal flooding. Such disregard is neither "rational" nor indicative of acting in "good faith" on behalf of residents residing in these areas.

We urge the Council to adhere to the mandate of this project, as defined on MODL's coastal protection website, and to consider the amended proposal that reinstates protections for at-risk tidal rivers. The safety of the community and the integrity of the environment depend on it.

The Municipality of the District of Lunenburg (MODL) is developing new rules that will impact how development occurs along our coast. MODL has a responsibility to its residents and our environment to ensure that new homes, businesses, and other structures are not placed in areas that could be at risk of coastal flooding or erosion, while protecting our natural assets from potential harms caused by development. The new regulations are intended to meet two primary objectives:

1. **Protecting our communities from our coast:** Keeping human activity away from the risks posed by coastal erosion and flooding.
2. **Protecting our coastline from us:** Protecting our sensitive coastal ecosystems from the impacts of human activity and development.

We would like to bring to the Council's attention that the Lahave River Estuary is considered a part of the Atlantic Ocean up to Bridgewater and is thus regarded as a segment of the Nova Scotia coastline up to the delimiting points. During the virtual Council meeting on June 4th, there was comment on why borders were drawn at the river mouth, stating council decided to only include "coastlines" in these regulations. In light of this discussion, it is imperative that these regulations encompass the rivers up to a point that they are no longer considered coastal. Supporting documents can be found in the Addendum.

Thank you for your attention to this urgent matter. We appreciate the efforts already made to develop comprehensive coastal protection regulations and trust that you will act swiftly to correct this critical oversight.

Sincerely,

John Duckworth - [REDACTED]  
Kimberly Landry - [REDACTED]

On behalf of concerned citizens

## Addendum

1. **Petition with online 102 signatures**  
<https://www.change.org/p/include-tidal-rivers-in-modl-s-coastal-protection-regulations>  
**Hard copy signatures 54** See attached
2. **Coastal Hazard map produce by The NS Province** which defines the risk areas which include tidal rivers. <https://nsgi.novascotia.ca/chm>
3. **The Canadian Encyclopaedia definition of:**  
*Lahave River Estuary is a narrow, shallow inlet of the Atlantic Ocean extending 24 km from Bridgewater, NS, to the coast*
4. **Nova Scotia map defining coastlines, according to NSGI and GEONova mapping the rivers are defined as NS coastline up to the delimiter for each tidal body of water.** *"The upper extent of the coastal river is based on the location where a change from flat to sloped elevation occurs. The coast river delimiter (WACORVF0) would be placed at this location."* Andy Robinson, GIS Coordinator - Geomatics Client Support.

Please see file attached with delimiter areas on the Lahave, Petite Riviere and the Martins River

5. **Example of risk to properties beyond MODL proposed boundary lines:**. A comparison of the maps for Fort Point and Kraut Point, depicting the proposed MODL flood risk boundaries at the river mouths, reveals a discrepancy with the NS Provincial Coastal Hazard Map. It's evident that the risk extends beyond the suggested boundaries outlined in the proposed regulations. The original flood risk map crafted by MODL staff mirrors and reinforces the risk areas delineated by the NS Provincial Coastal Hazard Map.
6. **Climatlantic: Climate Risk, Responsibility, and Liability for Municipalities: Exploring Municipalities' Responsibilities to Consider, Manage, and Disclose Climate Change Flood Risks**

Summary: <https://climatlantic.ca/wp/wp-content/uploads/2022/11/Climate-Risk-Responsibility-and-Liability-for-Municipalities-Summary-Nov-2022-ENGL.pdf>

Full report <https://climatlantic.ca/wp/wp-content/uploads/2022/11/Climate-Risk-Responsibility-and-Liability-for-Municipalities-Nov-23-2022-ENGL.pdf>

7. **NEWLY CHARTERED WATES: CONSTITUTIONAL CLAIMS ABOUT CLIMATE CHANGE DEC/2023**

Petition details

Comments



# Include Tidal Rivers in MODL's Coastal Protection Regulations

Started

May 30, 2024

Petition to

Municipality of the District of Lunenburg (MODL)

102

Signatures

200

Next Goal

👤 70 people signed this week

Sign this petition

## Why this petition matters



Started by [Callais Harrison](#)

## Media Inquiries

The Municipality of the District of Lunenburg (MODL) is updating its coastal protection regulations, but tidal rivers are currently not included. This oversight leaves homeowners vulnerable to flooding and erosion, endangers local ecosystems, and neglects an integral part of our community's natural landscape. Including tidal rivers in these regulations will help protect property values, preserve wildlife habitats, and ensure a comprehensive approach to environmental stewardship. Please sign this petition to urge the MODL to include tidal rivers in their coastal protection plans.



Share this petition in person or use the QR code for your own material.

[Download QR Code](#)

[Report a policy violation](#)

## Media Resources

Are you a member of the media looking to cover this petition?

[Reach out for available actions.](#)

## Decision Makers



Municipality of the District of Lunenburg (MODL)



70 people signed this week

[Sign this petition](#)

LAHAUE BAKER

10

54

# Include Tidal Rivers in MODL's Coastal Protection Regulations

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Name	Address	Email	Signature
Marcus Weagle	[Redacted]	[Redacted]	Marcus Weagle
Kerry Riley			Kerry Riley
J Houston			J Houston
R. Lockenby			R. Lockenby

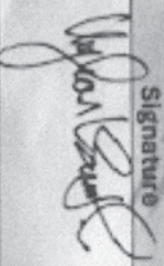
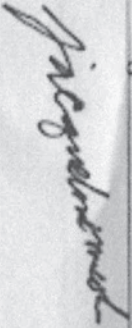

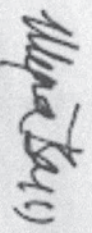


Porter / Deer Lane  
Street

5

## Include Tidal Rivers in MODL's Coastal Protection Regulations

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Name	Signature
VAUGHAN SMITH	
Jacqueline Cohen	
Mike Corvi	
Myra Barrs	


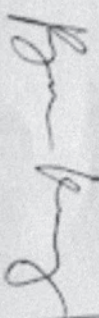



Rose Bay General Store

19

## Include Tidal Rivers in MODL's Coastal Protection Regulations

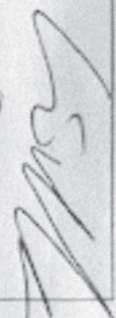

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Name	Address	Email	Signature
Callais Harrison			
DAVID SORCHER			
Byrona Kerry			
Lynn Belson			

Laura Hawkins
Leanne Paul Thorne
Robert Paul Reed
Robin John Hodges
Carl Blumenthal
Rosie Pollock
EDWARD MACDONALD
SEAN HINTON



<i>[Signature]</i>
D. Thorne
M. P. Reed
Robin Hodges
<i>[Signature]</i>
Rosie Pollock
E. MacDonall
Shannon

Jon Walker	
Jack Gewarth	com 
Jo QBEIG	Jo QBEIG@gmail.com
Christina Sygok	Christina Sygok
Amanda Dunk	✓
EVA Rovetta	502
Martha Lyford	

Lunenburg Post Office

3

## Include Tidal Rivers in MODL's Coastal Protection Regulations

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Name	Address	Email	Signature
Gottis Harrison	[REDACTED]	[REDACTED]	
Matthews Goldberg	[REDACTED]	[REDACTED]	
Kristie Harrigan	[REDACTED]	[REDACTED]	
Madeline Higgins	[REDACTED]	[REDACTED]	

Peter Ruess - Chairman / Board

17

# Include Tidal Rivers in MODL's Coastal Protection Regulations

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Name	Address	Email	Signature
Catherine Harrison			
DAVID SORCHER			
Byranna Kerr			
Lynn Benson			

Signature

Address

Wendy Harklow  
Gail Harklow

Wendy Harklow

St. Francis  
Cathy Harklow

St. Catherine

Angela Harklow

St. Francis  
St. Catherine

St. Francis

St. Francis

St. Francis

St. Francis





The Municipality of the District of Lunenburg (MODL) is developing new rules that will impact how development occurs along our coast. MODL has a responsibility to its residents and our environment to ensure that new homes, businesses, and other structures are not placed in areas that could be at risk of coastal flooding or erosion, while protecting our natural assets from potential harms caused by development. The new regulations are intended to meet two primary objectives:

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2. **Protecting our coastline from us:** Protecting our sensitive coastal ecosystems from the impacts of human activity and development.

CONTENT

ARTICLE

# LaHave River Estuary

Article by

P.c. Smith

Published Online

February 7, 2006

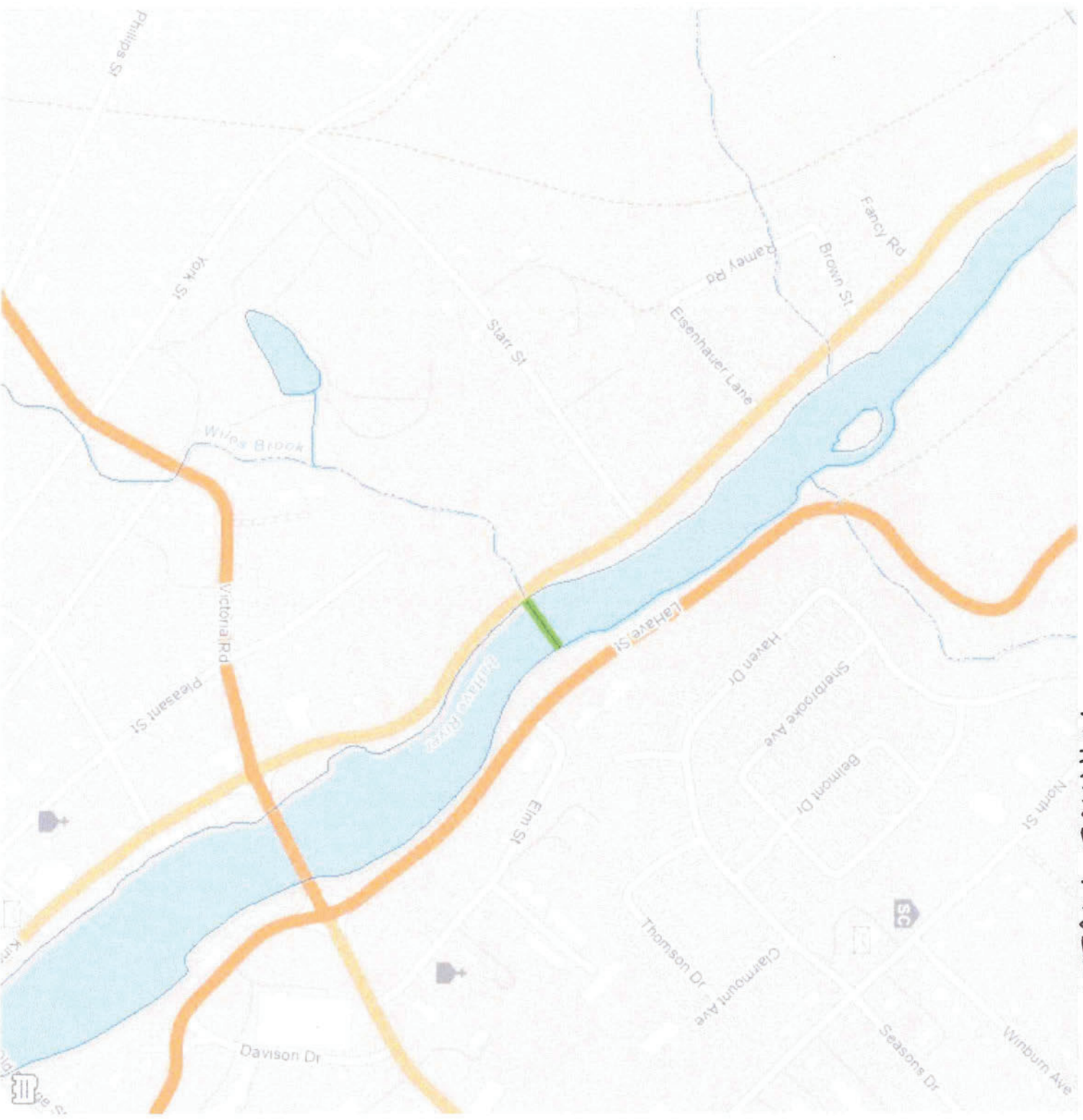
Last Edited

January 23, 2014

LaHave River Estuary is a narrow, shallow inlet of the Atlantic Ocean extending 24 km from Bridgewater, NS, to the coast.

LaHave River Estuary is a narrow, shallow inlet of the Atlantic Ocean extending 24 km from

GREENSBORO BY NSCI MARKING DELIMITED



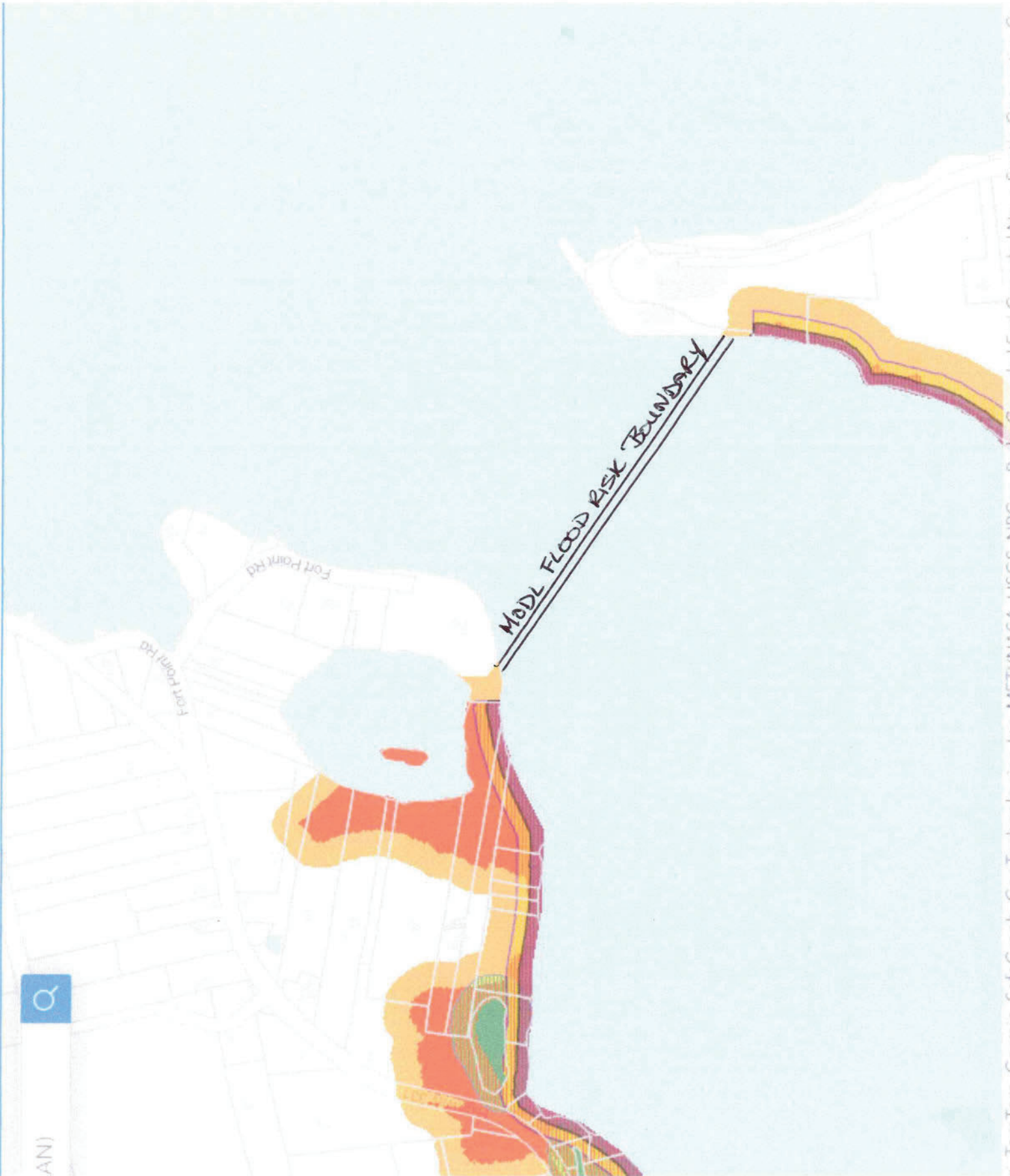
LAHAVRE RIVER.

MARTINS RIVER.

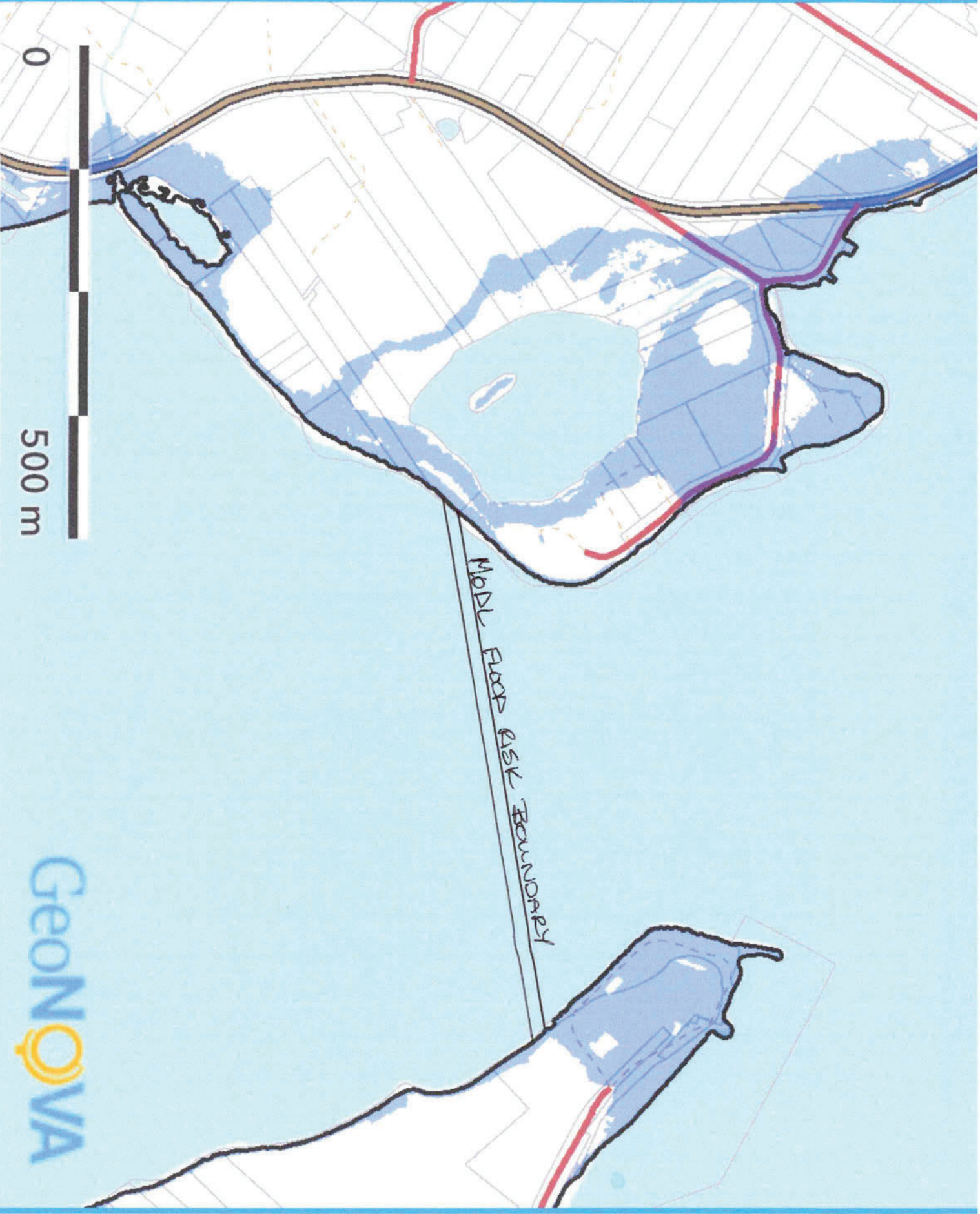


LEITE RIVIERE





Fort Point Community Center Construction for KATHORISKA LUCE AND ASSOCIATES, LLC. 1000 S. 10th Street, Fort Lauderdale, FL 33315





CLIMAtlantic

# Climate Risk, Responsibility, and Liability for Municipalities:

## Exploring Municipalities' Responsibilities to Consider, Manage, and Disclose Climate Change Flood Risks<sup>1</sup>

---

### Supplemental Summary of Key Messages

This document summarizes key messages delivered in a report prepared by East Coast Environmental Law on behalf of CLIMAtlantic. The report was inspired by a need for resources that can help municipalities in Atlantic Canada understand how the climate crisis may affect their responsibilities and liabilities. Focusing in particular on the risks represented by climate change flooding, the report asks: **What are municipalities' legal responsibilities to consider, manage, and disclose climate change flood risks, and what liabilities could municipalities face if they fail to meet those responsibilities?**

---

The report identifies five categories of potential sources of municipal responsibility to consider, manage, and disclose climate change flood risks in Atlantic Canada: (i) municipalities' enabling legislation; (ii) external legislation that imposes liability for environmental harms and personal injuries; (iii) the common law; (iv) the Constitution; and, (v) funding agreements and other contractual relationships in which relevant requirements are included as terms or conditions. The report then explores these potential sources of responsibility with an eye to three spheres of municipal activity: (i) management of municipal infrastructure; (ii) land use planning; and, (iii) development permitting.

---

<sup>1</sup> Prepared for CLIMAtlantic by East Coast Environmental Law, Halifax, NS, October 2022

## Category 1: Municipalities' Enabling Legislation

A key finding of the report is that municipalities in Atlantic Canada do not yet have clearly legislated responsibilities to consider, manage, and disclose climate change flood risks. By "clearly legislated responsibilities", we mean mandatory requirements that are imposed explicitly in the statutes and regulations that establish Atlantic Canadian municipalities and frame their powers and responsibilities. Although municipalities throughout Atlantic Canada have legislated powers and some requirements to conduct flood hazard mapping and/or flood risk mapping, the legislation imposing those responsibilities does not explicitly contemplate climate change flooding, and the requirements differ from province to province. Newfoundland and Labrador appears to be the only one of the Atlantic Canadian provinces that has explicitly incorporated climate change flood risks into its provincial flood mitigation regime, and, currently, the requirements imposed in that province are set out in policy, not legislation.

## Category 2: External Legislation

In addition to the legislation that establishes municipalities in Atlantic Canada and frames their powers and responsibilities, external legislation can set expectations and impose liabilities for failure to anticipate and avoid preventable loss and damage. The report does not conduct an exhaustive review of external legislation that could impose municipal responsibility to consider, manage, or disclose climate change flood risks in Atlantic Canada, but it offers some examples to illustrate one of its key messages, which is that municipal failure to consider climate change flood hazards and mitigate risk appropriately may increase the chances that infrastructure breakdown will violate regulatory requirements.

## Category 3: The Common Law

A key finding of the report is that Canada's courts have not yet produced reported decisions that explicitly address municipal responsibilities to consider, manage, or disclose climate change flood risks. Although there is a significant amount of case law addressing municipal liabilities for flood damage more generally, it appears that Canada's courts have not yet been asked to determine how municipalities should be preparing (or should have already prepared) for risks presented by climate change flooding.

Having found no reported Canadian court decisions that explicitly address municipal responsibilities to consider, manage, or disclose climate change flood risks, the report identifies the common law causes of action that historically have figured most prominently in disputes alleging municipal liabilities for flood loss and damage. It then assesses how those common law causes of action might give rise to municipal liability for loss and damage caused by climate change flooding. **A key finding of the analysis is that the common law of negligence is the likeliest source of municipal liability for future climate change flooding. The common law of "failure to warn", which the report treats as a category of negligence, could also be a significant source of liability for municipal failure to disclose known climate change flood risks.**

A longstanding distinction in Canadian negligence law between "core policy" decisions and "operational" decisions by governmental authorities creates a protective sphere that immunizes municipalities from some liability in negligence. Under the law, municipalities cannot be held liable in negligence for "core policy" decisions, provided those decisions are made rationally and in good faith.

Canada's common law of negligence recognizes that all governments have limited resources with which to carry out their functions and provide the public services that their communities want and need. Municipalities may not have much capacity to identify and mitigate climate change flood risks within their jurisdictions—some may determine that they have no capacity at all. The law does not require municipalities to take actions that are beyond their power: what it requires is that municipalities determine, rationally and in good faith, what is within their power and establish core policy responses through informed deliberation.

It is important to emphasize, however, that the law's protection for core policy decisions made rationally and in good faith means that municipalities cannot simply ignore problems that are staring them in the face. Burying one's head in the sand is not a rational or good faith response to a problem and is not a prudent approach within this legal framework.

Municipalities may ask themselves if the common law distinction between "core policy" and "operational" decisions could immunize them from liability for failure to warn if they decide, as a matter of policy, not to disclose climate change flood risk information to municipal residents. Although the report finds no case law addressing this question explicitly, it is, in the author's view, highly doubtful that a municipal decision to withhold known climate change flood risk information that could benefit public safety would be accepted as a rational, good-faith decision that should be protected from liability.

#### Category 4: The Constitution

The *Canadian Charter of Rights and Freedoms* ("the *Charter*") is a constitutional document that guarantees the rights and freedoms set out within it, "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". To date, four high-profile court cases have used *Charter* rights and freedoms as bases to allege that inadequate climate action by governments in Canada violates *Charter* rights. Three of those four cases have been discontinued, and one is still proceeding through the courts. Although the report finds no reported Canadian court decisions in which *Charter* claims alleging inadequate climate action have been brought against municipalities, the case law that has emerged to date demonstrates some willingness, on the part of the courts, to interpret the *Charter* progressively as law evolves to confront the climate crisis. A key message of the report is therefore that municipalities should not assume that a Canadian court will never agree that inadequate climate action by a municipality violates *Charter* rights. Municipalities should bear in mind that the climate crisis has the potential to change the law as we know it today.

#### Category 5 : Funding Agreements and Other Contractual Relationships

Legislation, the common law, and the Constitution are not the only sources of law that can impose municipal responsibilities to consider, manage, or disclose climate change flood risks. As municipalities manage their infrastructure, they frequently enter into funding agreements and other contractual relationships that are necessary to facilitate municipal asset management. A key message of the report is that funding agreements and other contractual relationships can impose binding legal requirements upon their parties, and municipalities should bear in mind that they may be required by contract to consider, manage, or disclose climate change flood risks under certain circumstances.



# **Climate Risk, Responsibility, and Liability for Municipalities:**

Exploring Municipalities' Responsibilities to Consider, Manage, and Disclose Climate Change Flood Risks

Prepared for CLIMAtlantic by  
Tina Northrup, Staff Lawyer  
East Coast Environmental Law

October 31, 2022

FULL REPORT ONLINE.



### *Disclaimer*

This report was prepared for CLIMAtlantic by East Coast Environmental Law, and East Coast Environmental Law takes full responsibility for its contents.

The report is intended to be an educational resource that provides general legal information and high-level legal analysis. **This report not does not provide legal advice, and its contents should not be relied on as such by any municipality or other third party seeking to understand their legal rights, responsibilities, or potential liabilities under any circumstances.**

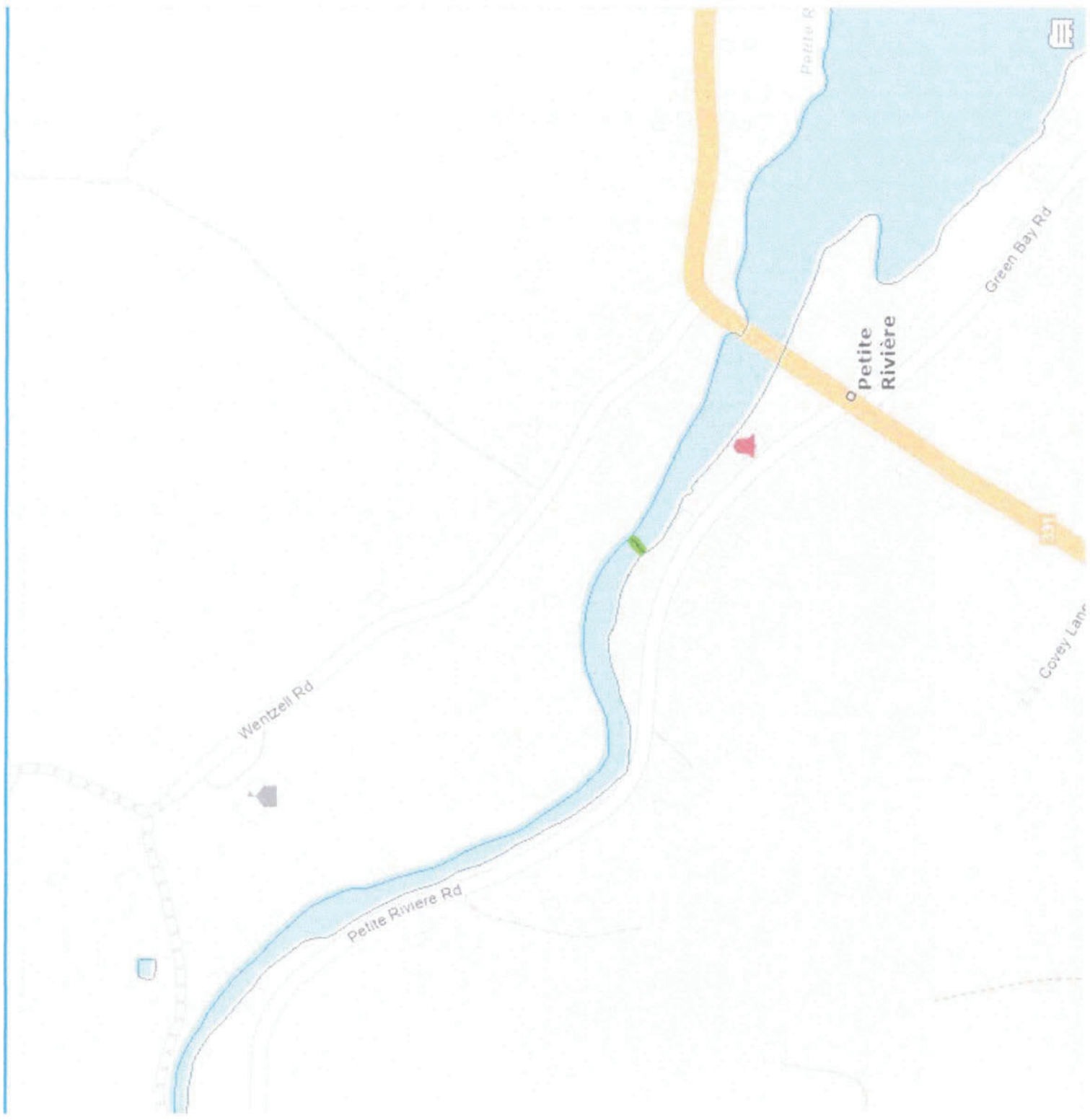
The legal information and legal analysis provided in this report are based in part on publicly accessible consolidations of provincial statutes, regulations, and policies. All reasonable efforts have been made to ensure the accuracy of the information provided, but if discrepancies are found between the contents of this report and the contents of provincial legislation and policies as they appear online, the online versions published on provincial government websites should be preferred.





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Menu

DECEMBER 20, 2023 • 7 MIN READ

# Newly Chartered waters: constitutional claims about climate change

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In [La Rose v. Canada](#), 2023 FCA 241, the Federal Court of Appeal permitted a novel climate change action against the Government of Canada to proceed. The appeal court reversed the Federal Court's decision that had struck out the claim. The Court of Appeal concluded contrary to two lower court decisions that climate change issues are justiciable and that government responses to them may ground a claim under section 7 of the *Canadian Charter of Rights and Freedoms*.

## What you need to know

- **Climate change claims may be justiciable.** Even though “the question of climate change is complex” and legislation addressing it “reflects a political choice”, the Court held that the climate change claims, in this case, were not invariably too political or indeterminate to be decided by a court. It did so because the claims were tied to the allegation that Canada failed to meet the emission targets it set for itself in the *Paris Agreement*, which were ratified by Parliament.
- **Climate change claims under section 7 of the Charter allowed to proceed.** The Court held that the claim of a right to a healthy and livable environment, combined with the legislative sanctioning of something less, is a novel claim under section 7 but concluded it is not doomed to fail. The absence of a healthy and livable environment may directly deprive a claimant's security of the person. The Court confirmed that the door has not shut on “positive rights” claims under section 7.
- **Climate change claims are capable of proof.** The Court of Appeal held that there is “no reason to conclude that harms flowing from climate change and climate-related legislation are manifestly incapable of proof”. There is “a vast body of scientific knowledge dealing with climate change, greenhouse gas emissions and their consequences on human health and the environment”.

## The lawsuits: climate change policies and inaction violate the *Charter*

### Background

Two groups of claimants (a group of children and youth and a group of Indigenous persons) sued the Canadian government for its failure to address climate change. Both actions sought remedies under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*. One of the claims also alleged that legislation authorizing the current levels of greenhouse gas (GHG) emissions, along with the continued and past approvals of GHG-emitting projects, resulted in Canada breaching its obligations under international law in the *Paris Agreement* and domestic law in the *Canadian Net-Zero Emissions Accountability Act*. In response, Canada brought a motion to strike the claims as either not justiciable or, alternatively, as disclosing no cause of action.

### Lower courts strike climate change claims

The Federal Court struck both the plaintiffs' respective statements of claim. In one decision, the Federal Court held that the claims under the *Charter* were too political to be suitable for judicial determination, and the claim failed to disclose a "sufficiently discrete instance of state action" for *Charter* analysis<sup>1</sup>.

In the other decision, the lower court also struck the claim as being not justiciable—the *Charter* claims fell beyond the courts' institutional capacity due to the claims' broad political nature. The Court noted that "[t]he issue of climate change, while undoubtedly important, is inherently political, not legal and is of the realm of the executive and legislative branches of government"<sup>2</sup>. The Court also held that, despite the claims to positive obligations under section 7 and 15 of the *Charter*, the plaintiffs had failed to plead specific laws or actions for the Court to evaluate.

### Federal Court of Appeal allows claims to proceed

The Federal Court of Appeal overturned both decisions, concluding that the section 7 *Charter* claims could properly be litigated. But it also held that the pleadings as framed "lack[ed] the focus necessary for constitutional analysis" and permitted the claimants to amend their section 7 pleadings<sup>3</sup>.

### Claims are justiciable

The Court disagreed with the lower courts that "claims are not justiciable simply because the question of climate change is complex or because the legislation reflects a political choice on how to address the problem"<sup>4</sup>. Here, the plaintiffs had linked their claim to Canada's failure to meet its commitments in the *Paris Agreement*, which were ratified by Parliament. This provided objective standards against which the *Charter* claims could be assessed. Despite the policy-laden nature of the claim, the plaintiffs were not seeking to "tell Canada how to fulfill its commitments"<sup>5</sup>.

### Section 7 claim can proceed

The Court explained that trying to classify the section 7 claims as either positive or negative rights claims was unhelpful. Rather, section 7 guarantees the right to life, liberty or security of the person. And here, the plaintiffs argued that the legislation and Orders in Council, which permit GHG emissions, deprived them of their section 7 rights. At the pleadings stage, this allegation was enough to permit the claim to proceed, but the Court required the plaintiffs to amend their pleadings to focus the claims on the constitutional analysis.

In its reasons, the Court used striking language about the threat posed by climate change. In the Court's words: "Climate change's current and potential effects are widespread and grave; they include loss of land and culture, food insecurity, injury and death ... [i]f these do not constitute special circumstances [grounding a section 7 claim], it is hard to conceive that any such circumstances could ever exist"<sup>6</sup>.

**Other claims have no reasonable prospect of success**

The Court dismissed the plaintiff’s claims under the “public trust doctrine”, the federal government’s power under section 91 of the *Constitution Act, 1867*, and section 15 of the *Charter* because:

- the public trust doctrine, framed by the plaintiffs as imposing a trust-like duty on Canada to preserve and protect inherently public resources for future generations, does not exist in Canadian law;
- Canada’s power to make laws for the peace, order and good government of Canada under section 91 of the *Constitution Act, 1867* does not impose a positive obligation on Parliament to enact certain laws, such as those that reduce GHG emissions; and
- the adverse or disproportionate effects of climate change on the plaintiffs are not the kind of adverse effects that section 15’s equality guarantee addresses—potential future intergenerational inequalities are beyond its scope.

**Implications: increasing exposure to climate change claims**

With strong language, the Federal Court of Appeal affirmed the “existential challenge” posed by climate change and the courts’ willingness to hear claims that address its potential harms.

This decision follows the trend of courts’ willingness to entertain novel climate change claims. For example, the Ontario Superior Court recently addressed a *Charter* claim against the Ontario government related to its GHG targets. It observed that there was “a compelling case that climate change and the existential threat that it poses to human life and security of the person present special circumstances that could justify the imposition of positive obligations under section 7 of the *Charter*”<sup>2</sup>.

These cases reflect the growing focus on whether companies or governments can achieve their GHG reduction or net-zero targets. They also demonstrate that setting a target and then failing to meet it increases the risk of environmental claims.

**FOOTNOTES**

*To discuss these issues, please contact the author(s).*  
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