

PART 1

Overview of
Proposed *Coastal Protection Act* Regulations


NOVA SCOTIA

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Part 1: Overview of Proposed Coastal Protection Act Regulations

Department of Environment and Climate Change

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Introduction

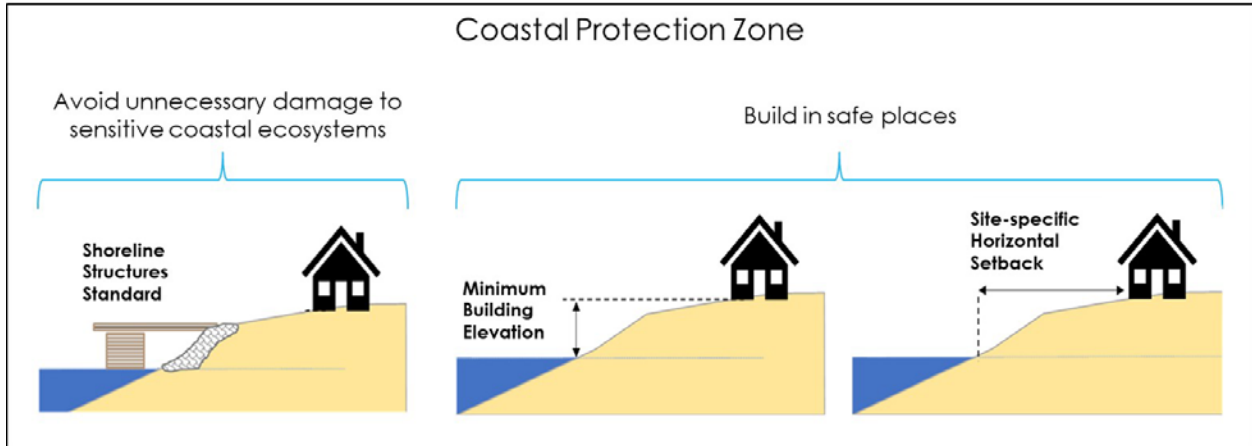
Living on waterfront property is a dream for many people. Now, more than ever, we need to plan for the effects of climate change and carefully consider the environment and the safety of our families, property, and business before we decide whether a coastal lot is suitable for development. The Government of Canada recently projected that sea level rise could exceed a meter by the end of this century along areas of Nova Scotia's coast. On top of this we need to consider the possibility of storm surges that can temporarily increase water levels even more. Much of our coastline is also at increasing risk from coastal erosion. Finally, development in coastal areas can also cause harm to valuable ecosystems, such as beaches and salt marshes that provide fish and wildlife habitat and help absorb greenhouse gases and flood waters. While these problems are expected to worsen in the coming decades, some communities in Nova Scotia are already experiencing these effects of climate change.

To address these issues, the Nova Scotia government committed to introducing legislation to provide legal protection for our coast. Public consultation in 2018 helped shape the *Coastal Protection Act*, which passed in 2019. This legislation provides a framework for coastal protection and limiting development in at-risk areas, but the act does not take effect until

regulations are developed that define how it will work. Legislation provides the authority and regulations contain the detail. It is not uncommon for regulatory changes to be required on occasion and it is easier to change regulations than legislation, which requires an act of the legislature.

Since the *Coastal Protection Act* was passed, the Department of Environment and Climate Change has been developing regulations on how it will work. Regulations will affect what can be built and where in two ways:

- on submerged Crown land along or below the high-water mark, the regulations will help ensure structures such as wharfs, boat slips, infilling and shoreline armouring are designed, constructed, and/or situated where disruption of valuable coastal ecosystems is minimized.
- On private and public lands, the regulations will ensure construction that requires a building permit is located where it is less at risk from sea level rise, coastal flooding and erosion (this includes homes, cottages, commercial or industrial buildings).



It is time to share the proposed regulations for public comment.

This discussion document provides a general overview of the act and how the proposed regulations will work. At the end, you will find a few questions to help provide your thoughts. We are interested to hear about concerns, questions, or ideas you may have.

Anyone looking for more detailed information on aspects of the proposed regulations, such as municipalities or those in professions that may be affected by the *Coastal Protection Act*, please see PART 2: *A Guide to Proposed Coastal Protection Act Regulations* and respond to the questions at the end of that document.

Coastal Protection Act

Nova Scotia's 13,000 km of coastline includes huge regional differences in tides, valuable coastal ecosystems, estuaries, and islands. Low-lying flood-prone areas and ecologically valuable coastal wetlands lie between eroding bluffs and hills. Even coastal features that are safe from these risks can be near areas unsuitable for development. This makes our coastline complex, meaning no single rule can apply.

The *Coastal Protection Act* is a framework for protecting our coast, recognizing its diversity. The Act will help ensure development and construction does not occur where it can unnecessarily disrupt coastal ecosystems or put structures at risk from coastal flooding and erosion. The Act will come into effect after regulations are approved by Executive Council (Cabinet).

The Act does not apply to all buildings and structures. Public infrastructure and commercial or industrial operations that need direct access to the water are exempted, as are activities that are licensed or permitted under the *Fisheries and Coastal Resources Act*, *Marine Renewable Energy Act*, *Wilderness Areas Protection Act*, and *Special Places Protection Act*. Construction in designated marshlands will need to meet the requirements of both the *Coastal Protection Act* and the *Agricultural Marshland Conservation Act*. The act does not apply to federal Crown land.

The *Coastal Protection Act* and its regulations will not be the only laws protecting the coastal environment. Multiple regulations and policies at the federal, provincial, and municipal level are in place to protect marine water quality, habitat, wetlands, and watercourses. The new regulations will focus on areas where gaps exist, rather than duplicate provisions already in place.

Proposed Regulations

The following sections describe the measures government proposes to include in the regulations.

The Coastal Protection Zone

The regulations will create a Coastal Protection Zone. New rules about where structures and buildings may be built will apply inside the zone. The zone will be a narrow band surrounding the province's coast, including land and water-covered areas on either side of the high-water mark.

The Coastal Protection Zone will reach inland a set distance from the high-water mark. Government is proposing that this distance be between 80 to 100 meters, although it is not finalized. This distance is not the same as a setback and does not necessarily mean that construction can't take place. It means that certain regulations apply to what and where you can build, modify or expand a structure, such as a house or building.

Nova Scotia faces serious coastal erosion problems. Some areas of our coast are almost immune to coastal erosion, while others experience more than a meter a year. Along with annual erosion and sea level rise, we need to think about the future when creating regulations. To be consistent with typical flood mapping initiatives, we are proposing to look 80 years ahead to the end of the century. This period is our planning horizon.

As part of developing the regulations, an erosion assessment tool developed for use by designated professionals was tested at 27 sites around the province. The results indicate a range of possible erosion scenarios, from almost no erosion to over 100 meters over the 80 year planning horizon, depending on the conditions at the site. Building inside the upland boundary of the Coastal Protection Zone triggers the requirement for an erosion assessment. The Coastal Protection Zone therefore needs to be wide enough to accommodate safe setbacks for a wide range of circumstances. The zone is also the area where the minimum building elevation will apply. It is important to provide a band of protection where development is high enough above the water levels expected during the 80-year planning horizon.

On the seaward side of the high-water mark, the regulations will not specify an exact boundary. Rather, our focus is on areas where the provincial *Crown Lands Act* and the *Beaches Act* apply.

The Coastal Protection Zone will include the areas around and on coastal islands, and parts of rivers connected to coastal waters and estuaries, including the Bras d'Or Lake. Regulations will identify how the Coastal Protection Zone boundary is applied along these rivers and in other areas, such as barrier beaches that separate beaches from ponds and lakes immediately next to the coast.

Coastal Protection Act Regulations for Building Locations

The regulations will set new rules that apply to municipal building permits for construction within the Coastal Protection Zone. These rules will help ensure that construction of new buildings or homes, or expansion of existing ones, is happening where it is safer from sea level rise, weather events and coastal erosion. The regulations will include two types of setbacks:

- **Minimum Building Elevations:**
The regulations will create province-wide vertical setbacks, to be known as minimum building elevations, within the Coastal Protection Zone. Some municipalities already have this type of vertical setback to protect against flooding. The exact height of the setbacks has not been finalized, but we recognize they must provide reasonable protection against sea level rise over the 80-year planning horizon. The minimum building elevation will also include an additional margin for storm surge. The province will produce digital maps to make it easier to determine whether a proposed construction location is above the minimum building elevation for each area of the coast. Municipalities must ensure that construction of a new home or building or an expansion of an existing structure will occur above the minimum building elevation before approving a building permit.

- **Site-specific Horizontal Setback:**
This is a horizontal setback from the high-water mark. It applies when a property owner intends to build a new structure or expand an existing one within the Coastal Protection Zone. The setback will be determined by a designated professional hired by the landowner. The designated professional will certify the setback in a report for landowners. This report will be required when applying for a municipal building permit (or development permit or development agreement) for construction in the Coastal Protection Zone. Designated professionals will use a standardized risk assessment tool provided by the province to calculate the setback and generate a report. The recommended setback represents the minimum allowed horizontal distance between the proposed structure and the high-water mark. The horizontal setback determined by the designated professional will not extend further inland than the boundary of the Coastal Protection Zone. The regulations may exempt the requirement for a horizontal setback in some areas.

Designated professionals will need to be a member in good standing of a professional body identified in the regulations. The definition of who can be a designated professional under the regulations is being explored with professional associations recognized as self-regulating professional bodies under provincial law.

Repair and maintenance of existing structures will generally be unaffected by both the vertical and horizontal setbacks unless construction increases the size of the structure's existing footprint or increases its internal volume.

Regulations for Wharves, Boat Ramps, and Other Structures

In the area that starts at the high-water mark and extends into the water, the regulations will focus on protecting coastal ecosystems and their ecological functions. Coastal ecosystems provide fish and wildlife habitat, filter excess nutrients from run-off before they reach the ocean, absorb flood waters, protect inland areas against wave action and store carbon in this era when reducing CO2 concentrations is particularly important.

Wharves, boat ramps and structures that stabilize the shoreline (such as breakwaters, seawalls, revetments, riprap and armour stone) can disrupt sensitive coastal ecosystems. Regulations will restrict works and construction that may interfere with the dynamic nature of the coast or disrupt these sensitive coastal ecosystems.

New requirements will be established for permits to build or modify structures along or below the high-water mark that is on Crown land or on land designated under the *Beaches Act*. The regulations will:

- ensure new wharfs, boat ramps and similar structures are built using cribwork that minimizes disruption of normal sediment transport and habitat connectivity;
- prohibit the use of pressurized lumber where it contacts the water; and
- restrict in-filling and stabilization work on Crown land below the high-water mark, such as shoreline armouring, unless it is needed to protect existing structures from coastal erosion or when necessary for wharf footings.

Exemptions will apply to permitted projects and activities undertaken to conserve or improve ecosystem function, such as fish ladders and saltmarsh restoration.

Putting the *Coastal Protection Act* into Effect

Administration

The *Coastal Protection Act* regulations are being designed to work through existing permitting and compliance processes at provincial and municipal levels of government.

For structures and works along or below the high-water mark on provincial Crown land or land designated under the *Beaches Act*, such as wharves, infilling or shoreline armouring, landowners will continue to apply for permits through the Department of Lands and Forestry under the *Crown Lands Act* and/or the *Beaches Act*. Landowners are responsible for ensuring their applications comply with the *Coastal Protection Act* and its regulations. Applications not in compliance will not receive a permit. Conservation officers will continue to enforce the acts as they do now. Where necessary, Conservation Officers will investigate whether construction activity is properly permitted and consistent with the permit, and take enforcement action when warranted.

Some changes to existing municipal processes will be needed to incorporate the new requirements for construction within the Coastal Protection Zone, but the regulations are being developed to keep these to a minimum.

The main changes are that municipalities will have to determine whether:

- a proposed construction location is within the Coastal Protection Zone and, if so, if it is above the minimum building elevation and upland of the setback as per the designated professional's report; and,
- the designated professional is a member in good standing of their professional organization.

Municipalities will be responsible for ensuring compliance with the terms of the building or development permit, as they are now.

The *Coastal Protection Act* requirements for the most part will be related to the location of the proposed construction. A municipality will need to determine the location of the proposed construction from a plot plan provided by the landowner, or from a location certificate from a professional land surveyor. These documents are often already required by municipalities a part of their permit processes.

No new powers or authorities for government inspection or enforcement staff are expected because the act works through existing legislation. If a landowner violates the Coastal Protection Act, they will have also violated other legislation and be subject to enforcement under those acts.

Mapping Tools

Recognizing that the zone boundaries and minimum building elevations are complex and maybe difficult to visualize, we are exploring opportunities for developing digital map resources to help interpret the regulations and provide guidance.

Training/Building Awareness

Part of the planning for implementing the *Coastal Protection Act* regulations includes training. Groups with a specific role in implementing the regulations include Designated professionals and municipal officials who issue permits that need to comply with the act. Designated professionals will need to understand their role and responsibilities and how to properly complete the erosion risk assessment. Municipal officials will require support to help them determine whether a building permit or development permit is subject to and compliant with the act.

All Nova Scotians, whether they live on the coast or further inland, have an interest in making sure coastal development is not at risk from flooding and erosion and does not damage valuable ecosystems. Those most directly impacted will be those planning to build on, or buy or sell, coastal property, and those in occupations and professions involved in those transactions. In addition to building public understanding and awareness, we will work with occupations and professions who require a detailed understanding of how the act and regulations work, such as those involved in planning or executing property transactions; planning for construction near the coast, and undertaking valuation, land use planning or subdivision activities.

We will work through professional associations, relevant provincial and municipal government offices, and other organizations to ensure those who need to be aware of the *Coastal Protection Act* and regulations understand the new requirements as early as possible.

We'd Like to Hear From You!

To help get the public discussion started, we have developed some questions to consider. Please feel free to answer the questions or provide any thoughts you want to share on the proposed regulations.

1. In your opinion, will the proposed regulations provide appropriate additional protection for coastal ecosystems? Why or why not?
2. Will the proposed regulations be effective in preventing development in areas at risk from sea level rise and coastal erosion? Why or why not?
3. The Coastal Protection Zone will be a band around the entire coast where the regulations apply. This is not a setback, but it is the area where minimum building elevations will apply and where landowners will need to hire a designated professional to check for erosion risks before they can get a building permit. Do you agree the Coastal Protection Zone should extend somewhere in the range of 80 to 100 metres inland from the high-water mark? Why or why not?
4. Are there any parts of the proposed regulations that you think are too restrictive? If so, which ones and why?
5. Are there any parts of the proposed regulations that are not restrictive enough? If so, which ones and why?
6. What can government do to ensure people have the information they need about the *Coastal Protection Act* and Regulations when planning construction on the coast?
7. Do you have any further thoughts you would like to share to help us write the final regulations?