

# A Citizen's Guide to Wetland Conservation in the Halifax Regional Municipality

Prepared by East Coast Environmental Law  
In partnership with the Ecology Action Centre  
With support from the Sage Environmental Program

20 February 2014



**ece law**  
east coast environmental law



## Citizen's Wetlands Conservation Guide: A Summary

East Coast Environmental Law produced this guide to provide residents of the Halifax Regional Municipality (HRM) with knowledge about the legal aspects of protecting wetlands that fall within the HRM. The guide covers the roles of both the province and HRM in protecting wetlands, explains the way that wetlands are classified under the applicable statutes, regulations and by-laws, and walks readers through the steps required to determine whether a development on or near a wetland is lawful.

The guide includes information about the Nova Scotia *Environment Act*, *Environmental Impact Assessment Regulation*, Nova Scotia *Wetland Conservation Policy* and HRM land-use by-laws and policies that impact wetland conservation.

### East Coast Environmental Law

East Coast Environmental Law (ECELAW) is a non-profit organization with charitable status. Our objective is to provide public interest environmental law assistance for Atlantic Canadians. ECELAW works towards a future where innovative and effective environmental laws and the fair application of those laws provide Atlantic Canadians with a clean, healthy environment that makes a positive contribution to the quality of life of its present and future inhabitants and visitors.

The author of the Guide is Lisa Mitchell, MES, LL.B.

East Coast Environmental Law thanks the following for their assistance with this Guide:

- John Brazner, Wetland Specialist, Nova Scotia Environment
- Mary Ellen Donovan, former solicitor, Halifax Regional Municipality
- John Charles, Real Property Planning, Halifax Regional Municipality
- Jennifer Graham, Ecology Action Centre
- Jocelyne Rankin, Ecology Action Centre
- Jacquelyn Rutherford, Law Student, Schulich School of Law





# Table of Contents

## Part I

The Provincial Government's Role in Protecting Wetlands .....	1
1.0 Definition and Ownership .....	1
2.0 Approvals .....	1
3.0 The Nova Scotia Wetland Conservation Policy .....	2
4.0 Environmental Impact Assessment .....	3
5.0 Release of a Substance .....	3
6.0 Enforcement .....	4

## Part II

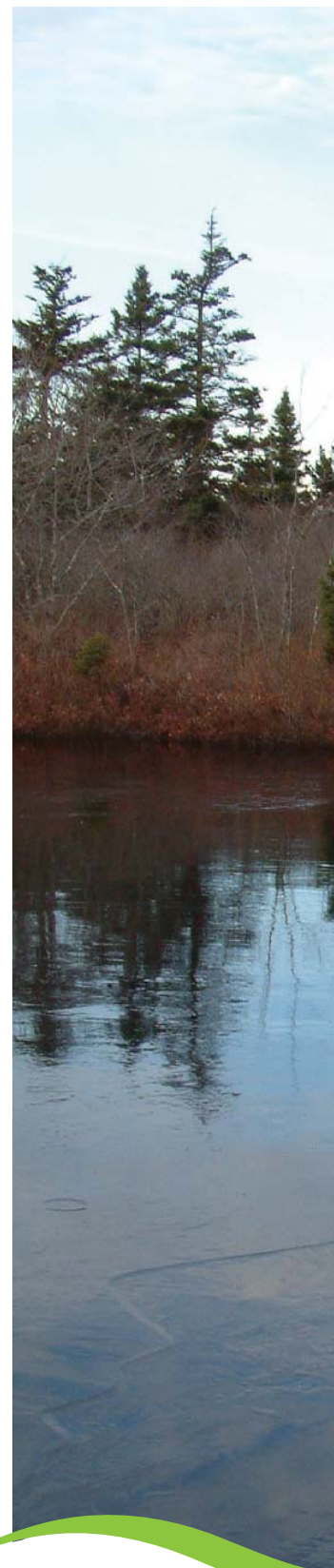
The Halifax Regional Municipality's Role in Protecting Wetlands .....	5
1.0 Municipal Government Act .....	5
2.0 Municipal Planning Strategies .....	6
3.0 Land Use By-laws .....	6
4.0 Halifax Regional Municipality .....	6
4.1 HRM Regional Plan .....	6
4.2 HRM Regional Subdivision By-law .....	6
4.3 Halifax Regional Planning Strategy .....	6
5.0 Summary .....	7

## Part III

Taking it Step by Step .....	8
1.0 Wetlands and Developments: A Scenario .....	8
2.0 Questions and Answers .....	8

<b>Appendix A:</b> A Comment on Watercourses .....	10
<b>Appendix B:</b> Useful Websites and Contact Information .....	11

<b>References</b> .....	12
-------------------------	----





# 1 The Provincial Government's Role in Protecting Wetlands

The Government of Nova Scotia is responsible for protecting wetlands within the province. Several provincial government departments play a role in wetland management, but the Department of Natural Resources has the primary responsibility for managing wetlands within the provincial government.<sup>1</sup>

The provincial department of Environment (Nova Scotia Environment) also plays a key role in wetland management and protection. The Nova Scotia *Environment Act* is the only provincial law that includes a definition of 'wetland' and the only law that requires an approval prior to any wetland alteration. The stated goal of the Provincial government is to prevent the net loss of wetland in the province.<sup>2</sup> Approvals to alter a wetland are used to manage and track alterations and to require compensation through rehabilitation and enhancement of other wetlands.

## 1.0 Definitions and Ownership

Subsection 3(bg) of the *Environment Act* defines a wetland as

... land commonly referred to as a marsh, swamp, fen or bog that either periodically or permanently has a water table at, near or above the land's surface or that is saturated with water, and sustains aquatic processes as indicated by the presence of poorly drained soils, hydrophytic vegetation and biological activities adapted to wet conditions.

Subsection 3(be) of the *Environment Act* defines a watercourse as

... the bed and shore of every river, stream, lake, creek, pond, spring, lagoon or other natural body of water, and the water therein, within the jurisdiction of the Province, whether it contains water or not, and all groundwater.

A wetland is generally the area where the land meets the water and therefore there is some overlap between the definition of a wetland and the definition of a watercourse. For example, any wetland that includes an open body of water will, on the whole, fit both the definition of a wetland and the definition of a watercourse.

The *Environment Act* states that watercourses are owned by the provincial government and cannot be privately owned.<sup>3</sup> Wetland areas can be privately owned, but the *Environment Act* gives the Minister of the Environment

the authority to authorize, restrict or prohibit the alteration of wetlands.<sup>4</sup>

## 2.0 Approvals

When the *Environment Act* was passed in 1995, wetlands were not defined or specifically addressed by the Act. At that time, the Minister used an open provision of the *Activities Designation Regulations* to designate the 'infilling or alteration of wetlands' as an activity requiring an Approval.

Paragraph 29(1)(b) of the *Activities Designation Regulations* gave the Minister the authority to require an Approval for:

Any other activity or class of activity which the Minister believes on reasonable and probable grounds causes or will cause a significant adverse effect because of any one or more of the following circumstances:

(b) the sensitivity of the site where the proposed activity is to be located;<sup>5</sup>

The details of the Approval requirement were in a formal written document entitled the *Nova Scotia Department of Environment Wetlands Directive*.

The *Wetlands Directive* stated:

The infilling or alteration of wetlands is designated as an activity under Section 29(1)(b) (sensitivity of the site where the proposed activity is to be located) of the *Activities Designation Regulations* which requires an Approval under the Act.<sup>6</sup>

The *Wetlands Directive* included a definition of wetland and an evaluation process to be used when making an Approval decision on a proposed wetland alteration. Any person seeking to infill or alter a wetland in Nova Scotia was required to obtain an Approval. The *Wetlands Directive* stated that an Approval was not required to alter lands that were being used for agricultural or storm water drainage.

Amendments to the *Environment Act* and Regulations in 2006 and 2007 added a definition of wetland to the Act and added the phrase 'alteration<sup>7</sup> of a wetland' to the list of designated activities requiring an Approval in the *Activities Designation Regulations*.<sup>8</sup> These amendments formalized the Approval requirements in the 1995 *Wetlands Directive*.

Section 50 of the *Environment Act* prohibits any person from commencing or continuing any activity designated



by the regulation as requiring an Approval unless that person holds the appropriate Approval. This means that the law requires any person who seeks to ‘alter’ a wetland anywhere in Nova Scotia to complete an Approval application form and submit it to Nova Scotia Environment (NSE).

The *Environment Act* and its Regulations do not define the term ‘alteration.’ NSE does provide a guidance document entitled, *So You Need to Alter a Wetland*, which specifically identifies infilling, draining, flooding and excavating in a wetland as an ‘alteration.’<sup>9</sup>

It is possible to draw on other examples to assist in defining the term alteration. For example, the US Army Corps of Engineers Wetlands Delineation Manual, which is used by wetland delineators in Nova Scotia, includes examples of human alterations that may affect wetlands, such as draining, ditching, levees, deposition of fill, irrigation, and impoundments.<sup>10</sup>

It is important to recognize that the *Environment Act* does not require wetlands to be protected. Rather, it prohibits the alteration of a wetland without an Approval. The proponent (person seeking to alter the wetland) must complete the wetland alteration application form in accordance with the Approvals Procedure Regulations and any other requirements set out by the Minister. The decision to issue the Approval, or not, lies with the Minister, who has broad discretion in making that decision. Where there is a valid Approval in place and the holder of the Approval is complying with the terms and conditions of the Approval, an alteration may legally occur. Failing to comply with the terms and conditions of an Approval is a violation of the *Environment Act* and this may lead to an enforcement action under the Act.<sup>11</sup>

Section 10 of the *Environment Act* requires the Minister to make certain documents and information available to the public through an environmental registry. Approvals are included on the list of items contained in the registry.

In practice, regional Nova Scotia Environment (NSE) staff, in consultation with the NSE Wetland Specialist, issue Wetland Alteration Approvals and set the terms and conditions for the Approvals. Terms and conditions found in a Wetland Alteration Approval generally include a requirement for the proponent to submit a compensation proposal for the altered wetland. Compensation may be in the form of wetland restoration, creation, enhancement, or research. Compensation plans are formalized in a Letter of Understanding between a wetland restoration professional and the applicant.

### 3.0 The Nova Scotia Wetland Conservation Policy

In 2011, NSE released the *Nova Scotia Wetland Conservation Policy* (‘Policy’). The stated goal of the Policy is to prevent the net loss of wetland in Nova Scotia through wetland conservation practices that integrate the need for wetland protection with the need for sustainable economic development, now and in the future.<sup>12</sup> The combination of the 2007 amendments to the *Environment Act* and the creation of the 2011 Policy made the 1995 Wetland Directive redundant.

The role of a policy is to provide guidance; policy documents are not subject to the rigours of the legislative process and therefore cannot amend the provisions of the *Environment Act* or its Regulations.

The ‘Scope and Application’ of the *Nova Scotia Wetland Conservation Policy* states that the following activities are made exempt from the Approval process.

An Approval is not required for altering:

- wetlands on federal lands (these are managed under the Federal Policy on Wetland Conservation);
- wetlands less than 100 m<sup>2</sup> in total area;
- wetlands constructed specifically for wastewater or stormwater treatment;
- wetlands created by humans on upland habitats not for the purpose of fulfilling compensation requirements under Wetland Alteration Approvals (e.g. excavated ponds);
- wetlands designated as “Marshlands” under the *Agricultural Marshland Conservation Act*;
- wetlands within agricultural drainage ditches;
- wetlands that develop as the unintended result of urban, commercial, industrial or agricultural construction projects completed less than 20 years before the current calendar year.<sup>13</sup>

The Policy further states that an Approval is not required for:

- linear developments that are less than 10 m wide and less than 600 m<sup>2</sup> in total area (such as forest access roads, secondary roads, and driveways) through shrub or wooded swamps that are not classified as “Wetlands of Special Significance”;
- periodic or emergency maintenance for public safety or protection of adjacent properties and infrastructure in wetlands that develop within the medians or drainage ditches of transportation corridors or those within the footprint of existing utility corridors or





electrical generation, transmission and distribution infrastructure;

- harvesting trees or mowing agricultural fields in a wetland (best management practices should always be used to minimize damage).<sup>14</sup>

At present, the Minister of Environment does not require a wetland alteration application for any of the activities described above and NSE inspectors will not take enforcement actions against parties who are complying with the Policy. The implication of this is that an Approval is not required to engage in any of the wetland alteration activities described above.

The application of the *Wetland Conservation Policy* appears to narrow the requirements of the *Environment Act* and the *Activities Designation Regulations* by limiting the activities requiring an Approval. The Act itself applies to every wetland in the province as long as it meets the definition found in section 3 of the Act. The *Wetland Conservation Policy* informs the public on how the provincial government will enforce the legal requirement.

The *Wetland Conservation Policy* also informs the public that the Minister will not issue an Approval to alter a 'Wetland of Special Significance' (WSS).

The Policy defines "wetlands of special significance" as

Areas of bog, fen, marsh, swamp, etc., that play particularly important roles in providing ecosystem services or functions (e.g. supporting rare or migratory species, protecting drinking water supplies, maintaining watershed health).<sup>15</sup>

Salt marshes, protected water areas and wetlands that support at-risk species are specifically identified as WSS. The Policy states that the government will not approve alterations to any WSS or alterations that pose a substantial risk to a WSS, unless the alteration will maintain, restore or enhance a WSS. The Minister has the discretion to allow an alteration if it is deemed to provide a necessary public function.<sup>16</sup> Wetlands of Special Significance are not defined or referenced in the *Environment Act* or the *Regulations*.

Nova Scotia Environment has produced several factsheets on wetlands that touch on topics including the ecological importance of wetlands, the rules and regulations pertaining to wetlands, farming and forestry near wetlands, and development near wetlands. The fact sheets are available at [www.novascotia.ca/nse/wetland/fact-sheets.asp](http://www.novascotia.ca/nse/wetland/fact-sheets.asp).

## 4.0 Environmental Impact Assessment

Environmental impact assessment is a process by which the environmental effects of an undertaking are predicted and evaluated and a decision is made on the acceptability of the undertaking.<sup>18</sup>

Section 32 of the *Environment Act* prohibits any person from commencing work on an undertaking until the Minister has notified the proponent in writing that the undertaking is approved.<sup>19</sup> The process to obtain this Approval includes an environmental impact assessment detailed in the *Environment Act* and the *Environmental Assessment Regulations* (EA Regulations). Similar to the *Activities Designation Regulations*, described above, the EA Regulations include a list of undertakings that must undergo an environmental impact assessment. An undertaking that disrupts a total of 2 hectares or more of any wetland is included on this list. It should be noted that 'disrupt' is not defined in the *Environment Act* or the EA Regulations.

Practically speaking, this means that any person seeking to undertake an activity, project, enterprise, structure or work that will disrupt 2 ha or more of any wetland in Nova Scotia must complete the environmental impact assessment process. Nova Scotia Environment has indicated that the exemptions created in the *Wetland Conservation Policy* also apply to the EA Regulations.<sup>20</sup> For example, the Minister would not require an environmental impact assessment for the harvesting of trees or mowing of agricultural fields in a wetland 2 ha or more because those activities are exempt from approval requirements by the *Wetland Conservation Policy*.

## 5.0 Release of a Substance

Section 67 of the *Environment Act* prohibits any person from releasing or permitting the release into the environment of a substance in an amount, concentration or level or at a rate of release that causes or may cause an adverse effect, unless authorized by an Approval or the regulations.<sup>21</sup>

Section 67 applies to the release of a substance into any part of the environment, including a wetland. *The Environment Act* includes a very broad definition of substance. The definition of release in the Act is also broad and includes to spill, discharge, dispose of, spray, inject, inoculate, abandon, deposit, leak, seep, pour, emit, empty, throw, dump, place, drain, pump or exhaust.

Any person who is found to be releasing a substance into a wetland where that substance may cause an adverse effect, such as impairment or damage to the wetland, can have an enforcement action taken against them under the Act. For example, enforcement actions have been taken for the 'release' of sand and gravel into a wetland where an individual attempted to construct a driveway across a wetland.



## 6.0 Enforcement

4

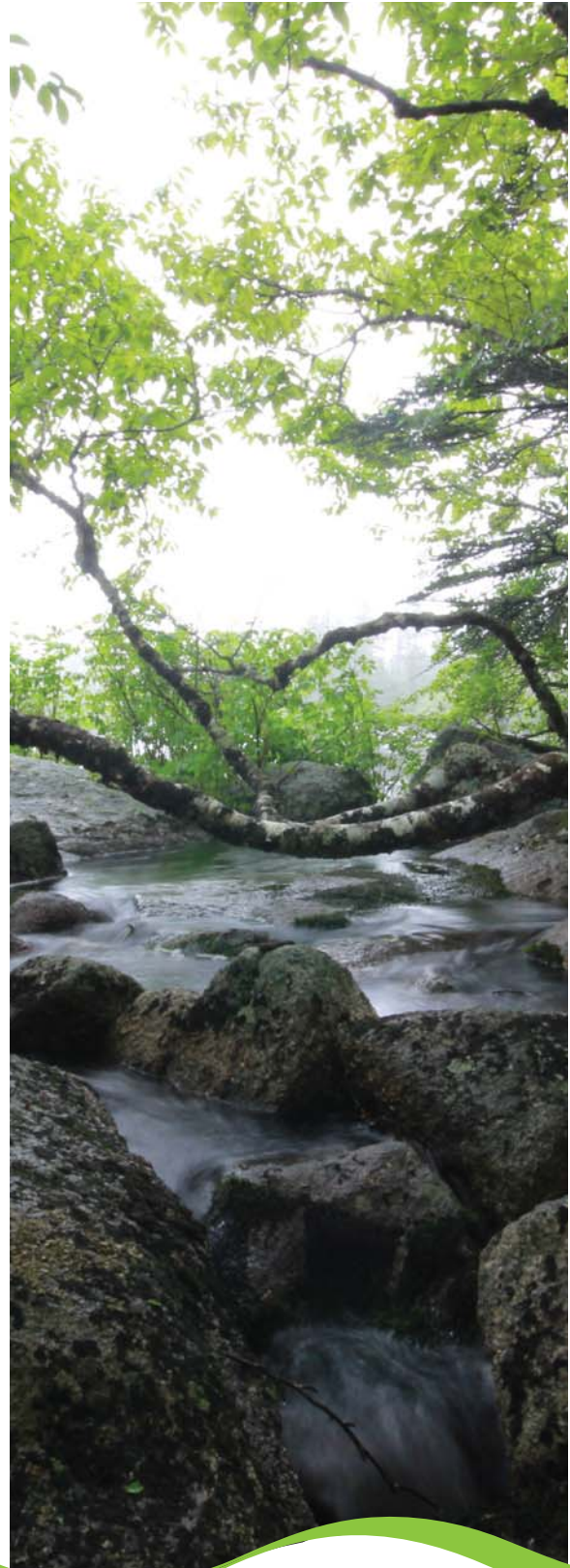
Part XII of the *Environment Act* is dedicated to inspections and investigations. NSE inspectors are given broad authority to enter and inspect any place that has an Approval or any place that the inspector has reasonable grounds to believe contains documents that relate to an activity that is the subject of an Approval.

In other words, inspectors have the authority to inspect any area where a wetland alteration is taking place, whether there is an Approval in place or not. Once on the site an inspector may issue a Directive or, in situations where time is of the essence and an irreparable adverse effect may occur, the Minister may issue an order to stop the activity.

NSE has approximately 60 inspectors in regional offices across the province. It is impossible for the inspectors to be aware of every wetland and every possible alteration that takes place. NSE inspectors become aware of an alteration through the Approval application process or when a citizen contacts NSE to complain or bring a suspected alteration to the attention of the inspection staff.

Any person can contact the NSE regional office in her or his area to report a suspected violation of the *Environment Act*, including an unapproved wetland alteration. A more official complaint process exists under section 115 of the *Environment Act*. This provision enables any person who believes an offence under the *Environment Act* has been committed to apply to the NSE to have an investigation of the alleged offence conducted. An NSE administrator is required to report to the complainant within 90 days.<sup>22</sup>

If a person proceeds without obtaining an Approval, he or she may be charged with an offence under the *Environment Act* and, if convicted, liable to a fine of not less than \$1,000 and not more than \$1 million.





## The Halifax Regional Municipality's Role in the Protecting Wetlands

### 1.0 Municipal Government Act

Municipalities are given powers by the province through provincial legislation to create by-laws that regulate activities within the municipality. In Nova Scotia, it is the provincial *Municipal Government Act* (MGA) that provides this authority. The MGA does not specifically mention wetlands; however it does reference 'swamps and marshes'.

The MGA defines the term 'watercourse' as a lake, river, stream, ocean or other body of water.<sup>23</sup> As described in Part I of the Guide, there may be overlap between the definition of a wetland and the definition of a watercourse. For example, any wetland that includes an open body of water will, on the whole, fit both the definition of a wetland and the definition of a watercourse.

### 2.0 Municipal Planning Strategies

Section 212 of the MGA provides municipalities with the power to develop Municipal Planning Strategies (MPS). The purpose of the MPS is to guide development and management of the municipality. The MPS is a policy document; it does not create law.

Section 214 of the MGA states that the MPS may include statements of policy in a number of areas including the identification, protection, use and development of lands subject to flooding, steep slopes, lands susceptible to subsidence, erosion or other geological hazards, swamps, marshes or other environmentally sensitive areas.

As an example, the Halifax Regional Municipality used this provision of the MGA to include policy statements in the 2006 HRM Regional Municipality Planning Strategy to protect wetlands, watercourses and other environmentally sensitive areas.

### 3.0 Land Use By-laws

If a municipal council adopts an MPS that contains policies about regulating land use or development, council is required by section 219 of the MGA to adopt a land-use by-law to carry out the intent of the MPS.

The MGA provides detailed guidance on the contents of a land-use by-law. Paragraph 220(5)(p) states that a land-use by-law can regulate or prohibit development within a specified distance of a watercourse. Paragraph

220(5)(p) states that a land-use by-law can prohibit development on land that is low-lying, marshy, or unstable.

Municipal by-laws are subordinate to provincial laws. However, a by-law that is more stringent than a provincial law may be enforceable as long as it does not conflict with the provincial law. The provincial government has the power to amend the Municipal Government Act, through the appropriate legislative process, and through those amendments add or remove powers provided to municipal councils.

### 4.0 Halifax Regional Municipality

#### 4.1 HRM Regional Plan

The Halifax Regional Municipality (HRM) Regional Plan ('Regional Plan') is intended to provide guidance for future development in HRM.<sup>24</sup> As part of the mandate of the Regional Plan to be responsive to emerging challenges and opportunities, it is currently undergoing a five-year review. The amended Plan was discussed at meetings of the Committee of the Whole on December 3rd and 10th, 2013.

Chapter 2 of the Regional Plan is dedicated to the natural environment and includes a section on water resources, with an outline of policies to protect water supplies, wetlands, and riparian buffer zones. Section 2.2.2 of the Plan speaks to the importance of wetlands in maintaining the quality and quantity of groundwater, and proper water cycling in the ecosystem (by filtering sediment, contaminants and excessive nutrients from water moving through the wetland). The Plan also recognizes the moderating effect of wetlands on floods, the habitat wetlands provide for fish and wildlife. The HRM intends, through the implementation of the Regional Plan, to prohibit the development of wetlands "until such time as they are made suitable for development". Unfortunately, the Plan does not explain what is meant by this last statement.

The Regional Plan's policy on wetlands (E-9) reads as follows:

HRM shall, through the applicable land use by-law, establish a Wetlands Schedule to be used as a reference in determining the presence of wetlands 2000 m<sup>2</sup> or greater in area. On all applications for development approval, the by-law shall require the proponent to verify the existence and extent of any wetland shown on the schedule. The by-law shall prohibit development within any such wetland.<sup>25</sup>





The Regional Plan also addresses the importance of leaving natural vegetation along watercourses to provide for minimal wildlife habitat requirements, and to regulate the temperature of streams, reduce flooding impacts, control erosion and add scenic value to the HRM. The Planning Strategy recommends following the watercourse buffer widths as described by the Department of Natural Resources (which are included in Appendix A, section 1 below).

The Regional Plan's policy on watercourse buffers, E-10, is as follows:

HRM shall, through the applicable land use by-law, require the retention of a minimum 20 metre wide riparian buffer along all watercourses throughout HRM to protect the chemical, physical and biological functions of marine and freshwater resources. The by-law shall generally prohibit all development within the riparian buffer but provisions shall be made to permit board walks, walkways and trails of limited width, fences, public road crossings, driveway crossings, wastewater, storm and water infrastructure, marine dependent uses, fisheries uses, boat ramps, wharfs, small-scale accessory buildings or structures and attached decks, conservation uses, parks on public lands and historical sites and monuments within the buffer. In addition, no alteration of land levels or the removal of vegetation in relation to development will be permitted.<sup>26</sup>

#### 4.2 HRM Regional Subdivision By-law

The HRM Regional Subdivision By-law ('RS Bylaw') is part of the HRM Regional Plan. The RS By-law requires all subdivision applications (preliminary, concept, tentative and final) to document the approximate location of any watercourse or wetland within or adjacent to the area proposed to be subdivided. It should be noted that the RS By-law does not limit the identification of wetlands to only those found on the Wetlands Schedule (2000 m<sup>2</sup> or greater).

The General Requirements set out in the RS By-law recognize that the By-law does not exempt any person from compliance with any provincial statute or regulations, including any requirement to obtain an approval, license, permission or permit.

For example, sections 132, 146 and 155 clearly state that Nova Scotia Environment may refuse approval of a subdivision plan where the plan is clearly contrary to a provincial statute or regulation.

#### 4.3 Halifax Municipal Planning Strategy

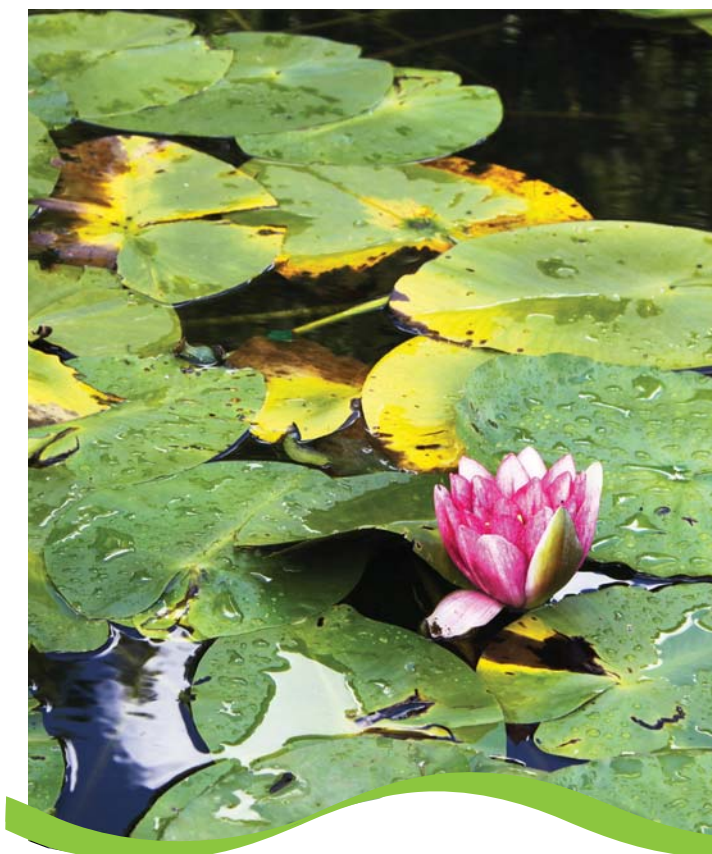
HRM has 20 Municipal Planning Strategies and associated Land Use By-laws. To provide an example of an MPS and Land Use By-law this Guide will use the documents developed specifically for Mainland Halifax.

##### Halifax Mainland MPS

The Halifax Mainland MPS does not define the term 'wetland', but refers to wetlands on three occasions. In Section X on Mainland South, the MPS requires a landscape plan to be submitted as part of the approval process and notes that wetlands are to be preserved whenever possible.<sup>27</sup> Also in Section X, under the heading Environment, the MPS requires the creation of environmental sensitivity mapping which will identify 'wetlands and streams' among other natural features. Finally, in Section XV on Bedford West under the heading Environmental Protection Policy BW-10 states that features of environmental significance, including wetlands, shall be delineated as areas of non-disturbances under development agreements.

##### Land Use By-law for Halifax Mainland

The Land Use By-law for Halifax Mainland ('HM By-law') defines 'wetland areas' as those areas of land shown on ZM-23 - Wetlands Map attached to the By-law.<sup>28</sup>



Item 14T of the HM By-law's General Conditions require every application for a development permit to be accompanied by plans, drawn to an appropriate scale, showing the location of all wetlands identified on ZM [zoning map]-23 attached to the by-law. Wetlands located within the lot to be developed and adjacent to the lot must be identified. The HM By-law prohibits development of any kind within any of the identified wetlands. This is limited to the wetlands found on the referenced zoning map (2000 m<sup>2</sup> or greater).

The elements of the By-law carry out policy E-9 of the Halifax Regional Municipality Regional Plan, as described above.

## 5.0 Summary

Individuals residing in the HRM seeking to alter a wetland must meet the following requirements:

- 1 Identify the nature and size of the wetland:
  - a) If the wetland is a 'wetland of special significance' NSE will not likely issue an Approval and the wetland cannot be altered regardless of any municipal planning strategy or by-law that is in place.
- 2 If the wetland is 2 hectares or greater, the proponent must have completed an environmental impact assessment before altering the wetland, regardless of any municipal planning strategy or by-law that is in place. There are a few specific circumstances where an EIA may not be required; all of these are listed in the NS Wetland Conservation Policy.
- 3 If the wetland is equal to or greater than 100 m<sup>2</sup>, the proponent must have an Approval from NSE before altering the wetland, regardless of any municipal planning strategy or by-law that is in place. There are a few specific circumstances where an Approval is not required; all of these are listed in the *NS Wetland Conservation Policy*.
- 4 All areas within HRM that have land-use by-laws in place have a Wetland Schedule that identifies wetlands in the area that are greater than 2000 m<sup>2</sup>. Proponents seeking application for development permits in HRM must verify the existence of all wetlands in the area proposed for development before receiving a development permit.
- 5 Within HRM, where a land use by-law is in place, development in a wetland greater than 2000 m<sup>2</sup> may be prohibited. HRM has stated their intent to prohibit developments on wetlands until such





## 8 Taking it Step by Step

### 1.0 Wetlands and Developments: A Scenario

You live in HRM in a subdivision that is expanding. You look out your back door one day to see a bulldozer preparing to fill in a marshy area behind your house, which you believe is a wetland.

- 1 The legal definition of a wetland is broad and the Minister of Environment has the legal responsibility to manage wetland alterations.
- 2 If possible, estimate the size of the wetland area because the level of protection of a wetland is dependent on its area.
- 3 Contact Nova Scotia Environment. (902) 424-2547 or 1-800-565-1633. Ask to speak with an inspector.
  - a) Inform the inspector of the activity and location.
  - b) Explain that you believe there is a wetland alteration taking place or about to take place.
  - c) Ask the inspector for a copy of the Wetland Alteration Approval for this location.
- 4 Document the communication.
- 5 Take photos of the activity if possible.
- 6 If you are comfortable communicating with the landowner or person in charge of the activity you may ask to see the Wetland Alteration Approval issued under the *Nova Scotia Environment Act*.
- 7 If the wetland is less than 100 m<sup>2</sup> and is not a Wetland of Special Significance, alteration of the wetland will not require an approval from NSE.
- 8 If the wetland is between 100 m<sup>2</sup> and 2000 m<sup>2</sup>, its alteration requires an Approval from NSE unless the wetland meets one of the exceptions found in the Wetland Conservation Policy (i.e. the wetland is located on property owned by the federal government).
- 9 If the wetland is greater than 2000 m<sup>2</sup> (i.e. would be found on the HRM Wetlands Schedule) and the proponent has an Approval from NSE, you may wish to contact the HRM Development Officer.

You may decide to end your inquiry at that point. If you are not satisfied with the action taken by NSE or the landowner you may wish to initiate a formal inquiry. Section 115 of the *Environment Act* requires the Minister to respond to a formal inquiry. If you require assistance preparing a section 115 inquiry please contact ECELAW at (902) 489-7997 or visit our website at <http://www.ecelaw.ca/our-services/inquiries.html>.

### 2.0 Questions and Answers:

#### 2.1 If the proponent has permission from HRM to alter the wetland, is the proponent still required to have an Approval from NSE?

Yes. *The only circumstance where an Approval is not required is if the wetland alteration fits one of the exceptions identified in the Nova Scotia Wetland Conservation Policy.*

#### 2.2 What if it is a Wetland of Special Significance?

*The phrase 'wetlands of special significance' is not mentioned in the Environment Act or Regulations; however, the phrase is used in the Nova Scotia Wetland Conservation Policy. The Policy identifies a goal of no loss in Wetlands of Special Significance (WSS). The Policy lists several WSS including salt marshes and designated protected water areas.<sup>29</sup>*

*Some of the Approval exemptions listed in the Policy do not apply to WSS. For example, an Approval is required to alter a wetland less than 100 m<sup>2</sup> if it is a WSS, and an Approval is required for a linear development of less than 10 metres wide and less than 600 m<sup>2</sup> if it is in a WSS.*

*If you have reason to believe that the alteration involves a wetland of special significance, contact NSE.*

#### 2.3 What if the wetland is 2000 square metres or more?

*If the wetland is 2000 m<sup>2</sup> or greater, HRM land-use by-laws may prohibit development in the wetland. This means that HRM will not issue a building permit. Nevertheless, HRM will usually not refuse a building permit as long as the terms and conditions of an NSE Wetland Alteration Approval can be met.*

#### 2.4 What if the wetland is connected to other wetlands?

*The definition of wetland in the Environment Act does not contemplate connected wetlands. However, the Wetland Conservation Policy specifically addresses the 'wetland complex' as a series of wetlands connected by obvious water flows. The Policy indicates that where wetlands are connected in this way the overall size of the complex, rather than the individual wetland, will be used to determine if the policy applies. For example, an Approval from NSE would*





9 *be required to alter a 60 m2 wetland if it is connected to another 60 m2 wetland by a stream.*

*Currently the HRM Wetlands Schedule does not identify wetland complexes. This may result in HRM issuing a building permit in a wetland complex even where NSE has not issued an Approval. NSE should be contacted to determine if the area is a wetland complex and requires an approval.*







## 10 A Brief Comment on Watercourses

### 1.0 Nova Scotia

This Guide does not provide detailed information on the protection of watercourses. However, there is a close connection between watercourses and wetlands; for that reason the Guide includes a brief comment on the definition and regulation of watercourses.

Subsection 3(be) of the *Environment Act* defines a watercourse as

... the bed and shore of every river, stream, lake, creek, pond, spring, lagoon or other natural body of water, and the water therein, within the jurisdiction of the Province, whether it contains water or not, and all groundwater.

As mentioned above, the provincial government owns all watercourses in the province. Multiple activities that may alter a watercourse are listed in the *Activities Designation Regulations* and require an Approval from NSE.

The *Environment Act* does not generally require activities to be setback from a watercourse and does not include buffer zones (although these may be conditions of the granting of an Approval). Section 67 of the Act prohibits any person from releasing or permitting the release into the environment of a substance in an amount, concentration or level or at a rate of release that causes or may cause an adverse effect. NSE may use this provision to take enforcement action where a polluting or damaging activity takes place near a watercourse or wetland.

Nova Scotia's *Forests Act*<sup>30</sup> also contains regulations that influence activities near watercourses.<sup>31</sup> The *Wildlife Habitat and Watercourses Protection Regulations*<sup>32</sup> require anyone cutting forests to leave strips of forests along watercourses as protection against the detrimental effects of forest loss.<sup>33</sup> Forest provides shade that optimizes water temperature for aquatic life, as well as food by way of insects and detritus for aquatic life. Forest also stabilizes stream banks against erosion, and slows the movement of surface water, reducing the risk of sediment entering watercourses and damaging fish habitat.

Sections 5 to 9 of the WHWP Regulations govern the width and quality of buffer strips of forest left standing next to watercourses following clearcutting. Some of these requirements apply to all watercourses, and some only to watercourses greater than 50 cm in width.

*All watercourses:* Forestry operators must ensure that they do nothing that would result in sediment deposited in a watercourse, and, to the fullest extent possible, retain all understory vegetation and non-commercial trees within 20 metres of a watercourse.

*Watercourses less than 50cm wide:* Forestry operators shall not operate or permit the use of a vehicle for forestry operations within 5 metres of the watercourse (save for the use of watercourse crossings approved by the Department of Environment). No retention of commercial trees is required for watercourses less than 50 cm wide.

*Watercourses greater than 50 cm wide:* Forestry operators shall establish a "special management zone" at least 20 metres wide adjacent to the watercourse. If the slope of the land within 20 metres of the watercourse is greater than 20%, then the zone must be increased by 1 metre in width for every additional 2% of slope, up to a maximum of 60 metres in width.

Within the special management zone, forest operators must not

- operate or permit use of a vehicle for forestry operations within 7 metres of the watercourse (unless crossing a watercourse as approved by Department of Environment);
- reduce basal area of living trees to less than 20m<sup>2</sup> per hectare; or
- create an opening in the tree canopy larger than 15 metres at its greatest dimension.

### 2.0 Halifax Regional Municipality

The *Municipal Government Act* defines a "watercourse" as "... a lake, river, stream, ocean or other body of water."<sup>34</sup> The MGA provides municipalities with the authority to establish land-use by-laws that regulate or prohibit development within a specified distance of a watercourse.<sup>35</sup>

In 2002, HRM had a consultant complete a *Water Resource Management Study*. The Study recommended the adoption of riparian buffers as established by the provincial Department of Natural Resources.<sup>36</sup> The HRM Regional Plan states that setbacks will be used as a general method of riparian buffer protection for the whole of HRM until buffers that meet the specific needs of each watershed can be determined through the watershed studies and implemented through secondary planning processes.



Policy E-10 of the Regional Plan states that all applicable land-use by-laws will require a minimum 20 metre wide riparian buffer along all watercourses throughout HRM. The purpose of the buffer is to protect the chemical, physical and biological functions of marine and freshwater resources.<sup>37</sup> The by-laws will prohibit all development within the riparian buffer with some specific exceptions.<sup>38</sup>

#### Land Use By-law for Halifax Mainland

The Land Use By-law for Halifax Mainland, which is similar to many other municipalities, implements Policy E-10 by stating:

14QA(1) Watercourse Setbacks and Buffers

(a) No development permit shall be issued for any development within 20m of the ordinary highwater mark of any watercourse.

(b) Where the average positive slopes within the 20m buffer are greater than 20%, the buffer shall be increased by 1 metre for each additional 2% of slope, to a maximum of 60m.

There are several exceptions to the setback and buffer requirements that are listed in the by-law.

## Appendix B



### Useful Websites and Contact Information

Nova Scotia Environment  
<http://www.gov.ns.ca/nse/>

General Inquiries  
(902) 424-3600

After Hours Emergency  
1-800-565-1633 (24 hours)

Environmental Monitoring and Compliance  
Regional and District Offices  
(902) 424-2547

Toll Free 1-877-936-8476

Wetland Alteration Approval Process <http://www.gov.ns.ca/nse/wetland/wetland.alteration.asp>

Halifax Regional Municipality  
<http://www.halifax.ca>

HRM Citizen Contact Centre  
<http://www.halifax.ca/311/>

311 toll-free from anywhere throughout HRM  
1 (800) 835-6428 outside of HRM but within NS

Development Services  
<http://www.halifax.ca/planning/Offices.html>

Eastern Region (902) 490-4490  
Central Region (902) 869-4375

Western Region (902) 490-5650

Municipal Planning Strategies and Land-use By-Laws <http://www.halifax.ca/planning/map.html>

MPS for Halifax Mainland  
[http://www.halifax.ca/planning/documents/Halifax\\_MPS.pdf](http://www.halifax.ca/planning/documents/Halifax_MPS.pdf)

HRM Land Use By-law for Halifax Mainland  
(edition 173) [http://www.halifax.ca/planning/documents/HalifaxMainland\\_LUB.pdf](http://www.halifax.ca/planning/documents/HalifaxMainland_LUB.pdf)

ENGO

East Coast Environmental Law  
<http://www.ecelaw.ca/our-services/inquiries.html>.

Inquiry Line  
(902) 489-7997

Ecology Action Centre  
<http://www.ecologyaction.ca>

(902) 429-2202

Other

US Army Corps of Engineers Wetlands Delineation Manual  
<http://www.wetlands.com/coe/87manp1a.htm>





12 <sup>1</sup> Wetland Conservation Policy, Government of Nova Scotia, September 2011 at page 8.

<sup>2</sup> *Ibid* at page 9.

<sup>3</sup> *Environment Act*, SNS 1994--95, c 1, s. 103

<sup>4</sup> *Ibid*, s. 105(3)(a).

<sup>5</sup> *Activities Designation Regulations*, N.S. Reg. 47/95 s. 29.

<sup>6</sup> Government of Nova Scotia, *Nova Scotia Department of Environment Wetlands Directive*, 1995, at 3.

<sup>7</sup> The Wetland Directive only applied to wetlands less than 2 ha. Proposed alteration of a wetland 2 ha or more requires an environmental impact assessment in accordance with Part IV of the *Environment Act* and Schedule A of the *Environmental Assessment Regulations*.

<sup>8</sup> *Supra* note 5, s. 5(1)(na).

<sup>9</sup> So You Need to Alter a Wetland, Nova Scotia Environment, on--line document.

<sup>10</sup> US Army Corps of Engineers Wetlands Delineation Manual, 1995, Environmental Technical Services Co., 834 Castle Ridge Rd., Austin, TX 78746--5152.

<sup>11</sup> *Supra* note 3, s. 68.

<sup>12</sup> *Supra* note 1 at p. 9.

<sup>13</sup> *Supra* note 1 at p.10.

<sup>14</sup> *Supra* note 1 at p. 10.

<sup>15</sup> *Supra* note 1 at p. 11

<sup>16</sup> *Supra* note 1 at p. 12.

<sup>17</sup> an undertaking is defined in the *Environment Act* (s. 3(az)) as “an enterprise, activity, project, structure, work or proposal that, in the opinion of the Minister, causes or may cause an adverse effect or an environmental effect, and may include, in the opinion of the Minister, a policy, plan or program or a modification, extension, abandonment, demolition or rehabilitation, as the case may be, of an undertaking”

<sup>18</sup> *Supra* note 3, s. 3.

<sup>19</sup> *Supra* note 3, s. 32.

<sup>20</sup> Personal communication with John Brazner, Wetland Specialist, NSE, 16 April 2013.

<sup>21</sup> *Supra* note 3, s. 67.

<sup>22</sup> *Supra* note 3, s. 115.

<sup>23</sup> *Municipal Government Act*, S.N.S. 1998, c. 18, s.191(r).

<sup>24</sup> The Halifax Regional Municipality Regional Plan, Regional Subdivision By--law and amending by-- laws officially came into effect on August 26, 2006. The Plan is a living document, and at time of writing the Plan includes amendments made up to October 5th, 2013.

<sup>25</sup> *Ibid* at 2.3 Water Resources, 2.2.2 Wetlands Protection E--9, page 27.

<sup>26</sup> *Ibid* at 2.3 Water Resources, 2.2.3 Riparian Buffers E--10, page 27.

<sup>27</sup> Municipal Planning Strategy, Halifax Mainland at page 149.

<sup>28</sup> HRM Land Use By--law, Halifax Mainland (edition 173) at page 10.

<sup>29</sup> *Supra* note 1, at p. 10.

<sup>30</sup> *Forests Act*, RSNS 1989, c 179

<sup>31</sup> The following information on watercourse buffers is from *A Legal Guide for Woodlot Owners in Nova Scotia*, 2013, by Jamie Simpson, used with permission

<sup>32</sup> *Wildlife Habitat and Watercourses Protection Regulations*, NS Reg 138/2001

<sup>33</sup> These regulations apply only in situations of forestry operations; those cutting forest or agriculture or development need not comply with these regulations.

<sup>34</sup> *Supra* note 23, s. 191(r).

<sup>35</sup> *Supra* note 23, s. 220(4)(o).

<sup>36</sup> Dillon Consulting Ltd, *HRM Water Resource Management Study*, December 2002 (revised September 2003) at page 10--4.

<sup>37</sup> It should be noted that the Regional Plan includes policies on floodplain protection, coastal inundation and watershed protection that are not covered in this Guide.

<sup>38</sup> *Supra* note 24, at 2.2 Water Resources, 2.2.3 Riparian Buffers, E--10, page 28.

