

Office of the Legislative Counsel
CIBC Building
802-1809 Barrington Street
Halifax, NS. PO Box 1116

25 March 2019

Dear Members of the Law Amendments Committee;

Re: Bill 106 – The Coastal Protection Act

Bill 106 creating the Coastal Protection Act is highly anticipated by the public, and by the East Coast Environmental Law Association and our collaborator, the Ecology Action Centre. It has been a long time in the making, with calls for more legal protections for our province's coast reaching back at least several decades. We hope that this law, which is likely the first of its kind in Canada, will serve all Nova Scotians by providing rigorous and necessary environmental protection to our important and vulnerable coastline. To that end, we respectfully call for the following amendments to the Bill.

First, the purpose section and principles section are extremely valuable because they provide clarity on the Bill's goals and set out the vision of the Act. That is why these principles should be featured at the very beginning of the Act: to make the fundamental intent and necessity of the Act immediately clear. This will then flow nicely into the current Section 4, which prioritizes the protections of the Coastal Protection Act over other Acts where they conflict.

Second, Section 8(2)(b) currently allows lands to be exempted through regulations created under the Act. While this makes sense in relation to land along the coast where there is no current threat, these lands should nonetheless be administered in a way that conforms with the purpose and principles of the Act. This will provide consistency across the province with respect to ecosystem, species and habitat protection while ensuring that structures or activities on those lands which were unforeseen do not threaten the objectives of the Act.

Third, on a point related to the previous two comments, the phrase "consistent, wherever possible, with the purpose and principles of this Act" is found in multiple provisions of the Act, including in sections 15(1)(b), 16, 17(3), 18(3), 19(2), 22(2), and 23. The purpose of the phrase is to require that the activities targeted by each of those sections is consistent with the purpose and principles of the Act. However, we consider the qualifier "wherever possible" to be legally unenforceable. This is because there are any number of reasons something may be possible or not possible. For example, the cost of complying with the principles and purpose of

the Act might be enough to justify non-compliance under this phrasing. Therefore, we recommend that the phrasing in Section 21, which omits “wherever possible”, be adopted for all of the highlighted sections.

Fourth, we are concerned with Section 15, which permits construction or modification of structures within the Coastal Protection Zone for commercial or industrial operations that require direct access to the coast. To begin, the Act is not clear about how this provision will be operationalized. If an independent designated professional is not required to certify this component of the operation, it will be difficult to know if the structure’s access to the coast is “essential”. This provision, as it currently stands, creates a double standard between private coastal property owners and businesses, by allowing businesses to function under lower standards with respect to building within the Coastal Protection Zone. Therefore, we call for a passage to be added to the effect that an independent designated professional be required to certify any commercial or industrial structures requiring direct access to coastal waters.

Additionally, “industrial” and “commercial” are not defined in the Act. Both terms are very broad and could encompass a number of activities. Either term might refer to any large or small structure related, even tangentially, to an industrial or commercial operation. Therefore, we call for these terms to be defined within the Act.

Sincerely,



Mike Kofahl
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