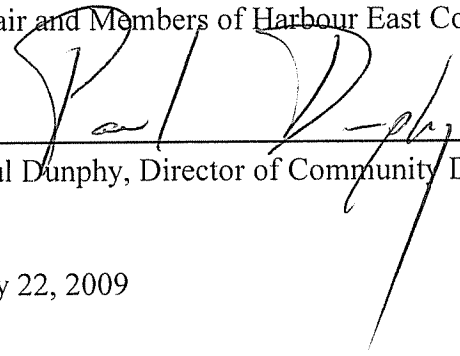


**Harbour East Community Council**  
**August 6, 2009**

**TO:** Chair and Members of Harbour East Community Council

**SUBMITTED BY:**   
Paul Dunphy, Director of Community Development

**DATE:** July 22, 2009

**SUBJECT:** **Eastern Passage / Cow Bay Land Use By-law Amendment –  
Watercourse Buffers**

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**INFORMATION REPORT**

**ORIGIN**

- On April 2, 2009, staff tabled a report dated March 12, 2009 with Harbour East Community Council (HECC) containing housekeeping amendments for the Eastern Passage / Cow Bay LUB as Case 01237.
- On May 11, 2009, HECC held a public hearing for Case 01237 which included proposed changes to the watercourse buffer regulations in Section 4.18(1)(d) (Amendment 18 of the report). HECC approved the housekeeping amendments except for Amendment 18.
- After the Public Hearing, HECC approved the following motion:  
  
*“Moved by Councillor Barkhouse and seconded by Councillor Nicoll, that staff prepare an information report on how watercourse buffers would be affected under the proposed Amendment 18.”*

**BACKGROUND**

**Watercourse Setbacks**

All plan areas within HRM currently limit development around watercourses and along the coastline. Watercourse buffers are important for the protection of water quality and wildlife corridors. With respect to watercourse buffers, the regulations in most of HRM’s land use by-laws (LUBs) are the result of policy in the Regional Municipal Planning Strategy (MPS).

In contrast, before the Regional MPS came into effect in 2006, the LUB for Eastern Passage / Cow Bay already limited development near watercourses, based on the Environmental Protection policies in the MPS (Attachment A). Maps 1A and 1B shows the Eastern Passage / Cow Bay plan area, with wetlands, watercourses, and minimum required buffers (assuming a slope of less than 20%). During the adoption of the Regional MPS, these standards were permitted to remain as they are more restrictive.

The Eastern Passage / Cow Bay LUB (Attachment B) is more restrictive than the typical regulations in place across HRM (Attachment C). The differences between the two sets of regulations is illustrated in Attachment D.

The main differences in the Eastern Passage / Cow Bay plan area from other HRM LUBs are:

- **Very few activities are permitted** in the buffer in relation to a development.
- **A wider minimum buffer** is required (a minimum ranging from 20 to 61 metres in Eastern Passage / Cow Bay; as opposed to 20 metres in most other areas).
- The Development Officer is **more limited in their ability to reduce the buffer for existing lots**, depending on site-specific geography and lot shape.
- There is **no exemption for Harbour-designated lands**.

Of the differences highlighted above, Amendment 18 focussed solely on the activities permitted within a buffer.

**Activities Permitted within Watercourse Buffers**

To allow for development of private waterfront property in a limited yet reasonable manner, most of HRM’s LUBs allow certain activities to occur within the watercourse buffer. However, the Eastern Passage / Cow Bay Land Use By-law permits fewer activities as outlined below:

<b>Eastern Passage / Cow Bay</b>	<b>Most HRM LUBs</b>
The placement of: - board walks, walkways and trails not exceeding 3 metres in width, within the required buffer of the Cow Bay River or Smelt Brook.  Along all other watercourses no	The placement of: - one accessory structure or one attached deck not exceeding a footprint of 20 m <sup>2</sup> or a combination of an accessory structure and attached deck not exceeding 20 m <sup>2</sup> , - fences, - boardwalks, walkways and trails not exceeding 3 m in width, - wharfs, boat ramps, marine dependent uses, fisheries uses,

Eastern Passage / Cow Bay	Most HRM LUBs
activities are permitted within the watercourse buffer areas (e.g. the Atlantic Ocean, Barrier Pond, Cow Bay Lake, or other streams or ponds).	<ul style="list-style-type: none"> <li>- conservation uses, parks on public lands, historic sites and monuments, and</li> <li>- public road crossings, driveway crossings, and</li> <li>- wastewater, storm and water infrastructure.</li> </ul> These activities are permitted within all watercourse buffers.

**DISCUSSION**

Since there are so many watercourses in the Eastern Passage / Cow Bay plan area, some properties are unable to be developed due to the extent of the watercourse buffers. For example, while a house may be proposed outside of the watercourse buffer, the inability to put a driveway or water and sewer laterals in the buffer can render the property unable to be developed. Staff believe that the Eastern Passage / Cow Bay planning documents did not intend to prohibit development on properties adjacent to or containing watercourse buffers.

However, the protection provided under the LUB only applies in relation to a development (a use or activity that requires a development permit). For example, if a property owner excavated or infilled or constructed a driveway within the buffer before getting a permit for a house, staff could not stop the driveway because it does not require a development permit.

As a real example, there is a property on Bissett Road where the bluff overlooking Cow Bay has been levelled. Since no development was underway, the watercourse buffer did not apply and excavation could continue. Unfortunately, due to the limits of what a LUB may control (as dictated by the HRM Charter), this is not an easy loophole to address.

**Amendment 18 (New Activities Permitted within Watercourse Buffers)**

Amendment 18 was drafted by staff in response to feedback that certain properties in the Eastern Passage / Cow Bay plan area were unable to be developed, due to the restricted activities permitted in the watercourse buffer. To allow for development on these properties, and to limit the impact of activities in the buffer areas, staff proposed Subsection 1(d) of the LUB be revised to read as follows:

*“1(d) Within the required buffer pursuant to clauses (a) and (b), activity shall be limited to the placement of fences not exceeding 1.83 metres in height, boardwalks, walkways and trails not exceeding 3 metres in width, public road crossings, driveway crossings and wastewater, storm and water infrastructure.”*

Amendment 18 was an attempt to make the provisions within Eastern Passage / Cow Bay consistent with the Regional Plan but more importantly to address two weaknesses of the current regulations. First, it would have allowed those specific property owners who cannot access or

service building sites on their land to develop. Second, although Amendment 18 would have allowed more activities within the watercourse buffer, those activities would be under the review of the Development Officer, as opposed to occurring prior to the permitting stage.

### **Conclusion**

While Amendment 18 appears to have been too broad of a solution, the problem experienced by certain property owners in the Eastern Passage / Cow Bay plan area still exists: the strictness of the existing regulations for watercourse buffers has deprived some properties of their development potential.

If HECC wishes to address the above issue, a motion is required to open an application which may propose amendments to both the Eastern Passage / Cow Bay MPS and LUB.

### **BUDGET IMPLICATIONS**

None.

### **FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

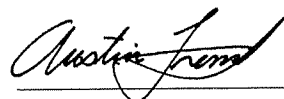
### **ATTACHMENTS**

Maps 1A and 1B	Eastern Passage / Cow Bay Plan Area – Watercourse Buffers
Attachment A	Policy Excerpt from Eastern Passage / Cow Bay MPS
Attachment B	Excerpt from Eastern Passage / Cow Bay LUB
Attachment C	Excerpt from a typical HRM LUB – Dartmouth
Attachment D	Comparison of Eastern Passage / Cow Bay watercourse buffers to a typical HRM example

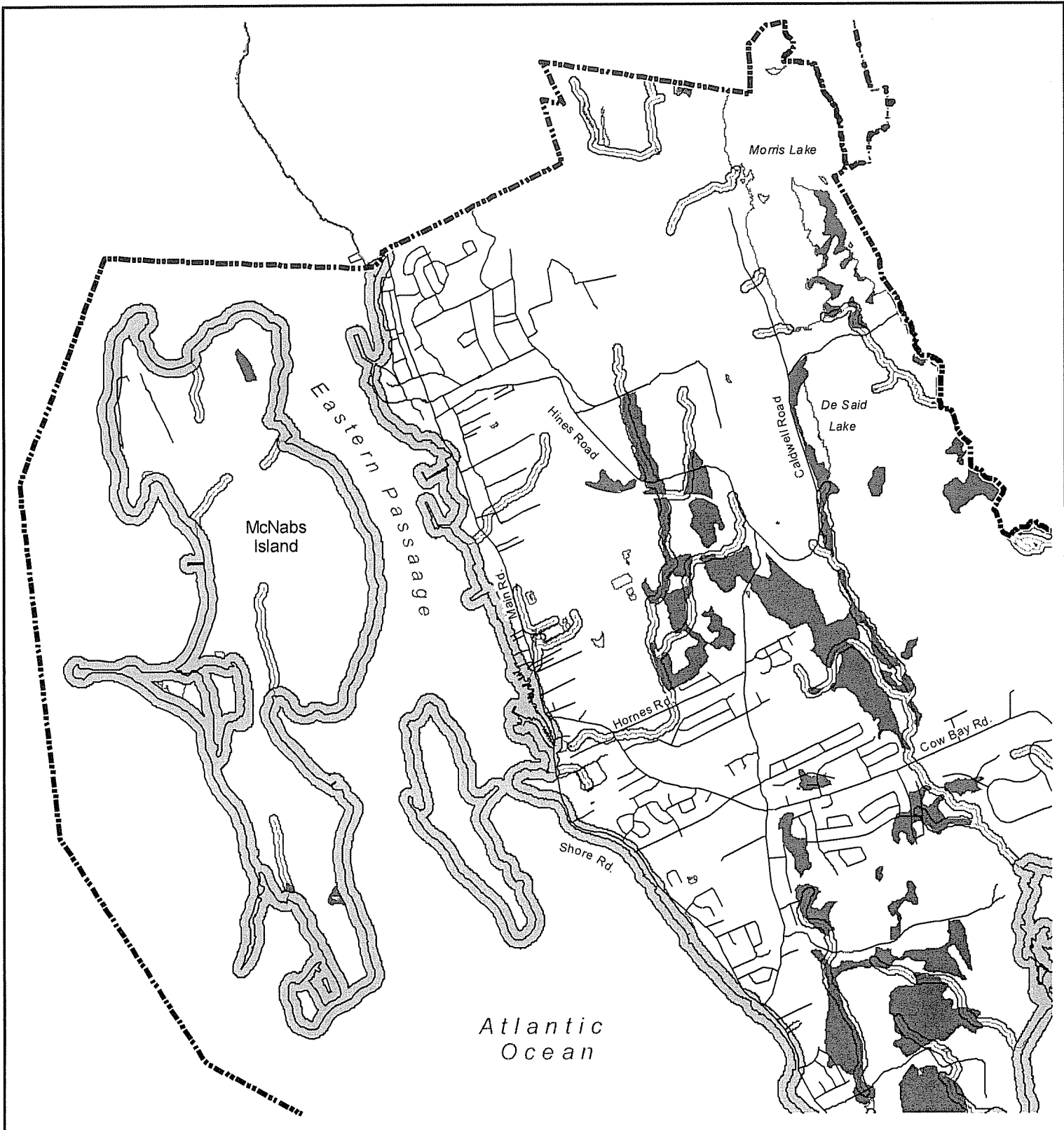
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Mackenzie Stonehocker, Planner I, 490-3999





Report Approved by:



Austin French, Manager of Planning Services, 490-6717



**Map 1A Water Course Buffer**

-  20m Watercourse Buffer (Cow Bay River)
-  30m Watercourse Buffer All Other Watercourses
-  61m Watercourse Buffer (Ocean, Cow Bay, & Cow Bay Lake)
-  Wetlands greater than 2000 square metres

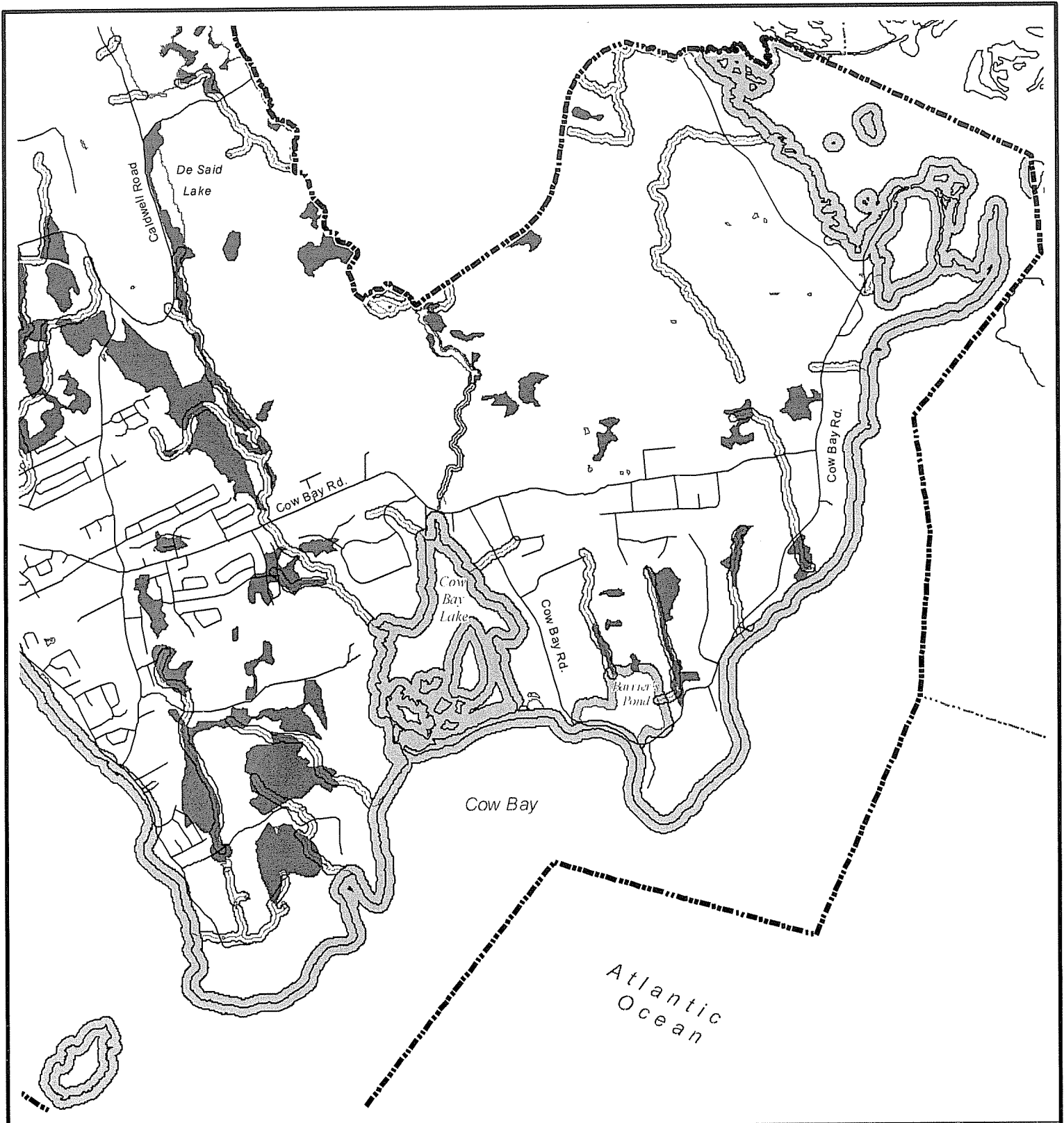
**HALIFAX**  
 REGIONAL MUNICIPALITY  
 Community Development  
 Planning Services

This map is an unofficial reproduction of a portion of the Eastern Passage/Cow Bay Plan area





HRM does not guarantee the accuracy of any representation on this plan

Eastern Passage/Cow Bay Plan Area





### Map 1B Water Course Buffer

-  20m Watercourse Buffer (Cow Bay River)
-  30m Watercourse Buffer All Other Watercourses
-  61m Watercourse Buffer (Ocean, Cow Bay, & Cow Bay Lake)
-  Wetlands greater than 2000 square metres

**HALIFAX**  
REGIONAL MUNICIPALITY  
Community Development  
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Eastern Passage/Cow Bay Plan Area



**Attachment A:**  
**Policy Excerpt from Eastern Passage / Cow Bay MPS**

**Environmental Protection**

- EP-1 It shall be the intention of Council to establish Map 4 - Environmental Constraints in the MPS. Lands included on the map are known watercourses, wetlands, floodplains and areas of steep slopes. This map shall show areas which are unsuitable or pose unusual difficulties or risks for development. With respect to floodplains, Council will encourage the development of floodplain mapping to identify the 1/20 and 1/100 year floodplains for Cow Bay River and Smelt Brook and incorporate appropriate development policy in the MPS for each.
- EP-2 It shall be the intention of Council not to consider any rezoning application which will result in the development, excavation, infilling or alteration of any wetland, watercourse, water resource or floodplain, unless it is clearly demonstrated by detailed study that any such area, in whole or in part, does not meet any definition or fulfill such natural functions, as described in this planning strategy, or is otherwise not hazardous for development.

**Wetlands Protection**

- EP-3 It shall be the intention of Council to establish an Environmental Conservation (EC) Zone in the Land Use By-Law. The zone is applied to the wetland areas identified on Map 4 - Environmental Constraints and is subject to Policy EP-2. It shall further be the intention of Council to prohibit excavation, infilling, or any other alterations within this zone, including the removal of trees or other vegetation. Developments are limited to the placement of boardwalks and walkways and historic sites and monuments. A minimum twenty-five (25) foot setback for buildings from an EC zone shall be included in the LUB.

**Watercourse Setbacks and Buffers**

- EP-4 It shall be the intention of Council to establish setback and buffer requirements for all watercourses within the plan area, including but not limited to those as generally shown on Map 4 - Environmental Constraints. No structure, excavation, infilling or grade alteration shall be permitted to occur within one hundred (100) feet of any watercourse. The retention of natural vegetation within the setback / buffer area shall be part of these requirements. The land use bylaw shall contain provisions to reduce this requirement to fifty (50) feet for lots in existence on the effective date of this planning strategy where otherwise development would be prohibitive.

### **Floodplains - Cow Bay River and Smelt Brook**

EP-5 It shall be the intention of Council to establish a Floodplain Zone for application to the identified floodplains of the Cow Bay River and Smelt Brook. Permitted uses include forestry and agricultural uses (excluding buildings), passive and active recreation uses and conservation uses. No excavation, infilling or grade alteration shall be permitted to occur within one hundred (100) feet of Cow Bay River and within one hundred (100) feet of Smelt Brook and the retention of natural vegetation within these areas shall be required. These restrictions shall also apply to areas beyond the one hundred (100) feet that are within twenty-five (25) feet of wetlands as shown on Map 4 - Environmental Constraints.

### **Drainage Basin Study**

EP-6 It shall be the intention of Council to examine the drainage area of the community of Cole Harbour which contributes to flows into the Cow Bay River. Appropriate policies and regulations are to be considered for inclusion within the Cole Harbour / Westphal MPS which address storm water quantity and quality and the potential downstream impacts on the Cow Bay River and Cow Bay Lake.

### **Coastal Lands**

EP-7 It shall be the intention of Council, through the land use by-law, to establish a building setback and buffer of two hundred (200) feet for those coastal lands as shown on Map 4 - Environmental Constraints. No structure, excavation, infilling or grade alteration shall be permitted to occur within the setback / buffer area and the retention of natural vegetation within the area shall be part of these requirements. The land use bylaw shall contain provisions to reduce this requirement to one hundred (100) feet for those lots in existence on the effective date of this planning strategy and if otherwise development would be prohibitive.

### **Municipal Stormwater Management**

EP-8 It shall be the intention of Council to encourage the use of innovative stormwater management systems which reduce the degree of impact on the natural environment. The use of stormwater retention / detention ponds, infiltration trenches, and velocity breaks and other similar techniques are therefore to be encouraged in any new development and in upgrades of existing systems where appropriate.



**Attachment B:**  
**Excerpt from Eastern Passage / Cow Bay LUB**

**SECTION 4.18: WATERCOURSE SETBACKS AND BUFFERS**

- (1) (a) No development permit shall be issued for any development within 61m of the ordinary highwater mark of the Atlantic Ocean, Cow Bay or Barrier Pond in the area as shown on Map 4 - Environmental Constraints of the Eastern Passage/Cow Bay Municipal Planning Strategy; 20m of the Cow Bay River north of Caldwell Road; 30m of the ordinary highwater mark of any other watercourse.
  - (b) Where the average positive slopes within the 20m buffer of the Cow Bay River, north of Caldwell Road, or the 30m buffer of any other watercourse, except Atlantic Ocean, Cow Bay or Barrier Pond, are greater than 20%, the buffer shall be increased by 1 metre for each additional 2% of slope, to a maximum of 60m.
  - (c) Within the required buffers pursuant to clause (a), no excavation, infilling, tree, stump and other vegetation removal or any alteration of any kind shall be permitted in relation to development.
  - (d) Within the required buffer pursuant to clauses (a) and (b), activity shall be limited to the placement of board walks, walkways and trails not exceeding 3 metres in width, within the required buffer of the Cow Bay River or Smelt Brook.
  - (e) Notwithstanding clause (a), the required buffer for construction and demolition operations shall be as specified under the applicable CD Zone.
  - (f) Within the buffer required pursuant to clause (e), no excavation, infilling, tree, stump and other vegetation removal or any alteration of any kind shall be permitted in relation to a development.
- (2) Notwithstanding subsection (1), where an existing residential main building is located within the required buffer, accessory structures, subject to meeting other requirements of this by-law, shall be permitted provided they are located no closer to the watercourse than the existing main building.
  - (3) Where the configuration of any existing lot, including lots approved as a result of completed tentative and final subdivisions applications on file prior to the effective date of the Regional Municipal Planning Strategy, is such that no main building could be located on the lot, the buffer distance shall be reduced to 30m of the ordinary high water mark of the Atlantic Ocean, Cow Bay Lake or Barrier Pond; or 15m of the ordinary highwater mark of any other watercourse.
  - (4) Notwithstanding subsection (1), nothing in this by-law shall prohibit the removal of windblown, diseased or dead trees, deemed to be hazardous or unsafe.

- (5) Notwithstanding subsection (1), the selective removal of vegetation to maintain the overall health of the buffer may be authorized by the Development Officer where a management plan is submitted by a qualified arborist, landscape architect, forester or forestry technician.
- (6) Every application for a development permit for a building or structure to be erected pursuant to this section, shall be accompanied by plans drawn to an appropriate scale showing the required buffers, existing vegetation limits and contours and other information including professional opinions, as the Development Officer may require, to determine that the proposed building or structure will meet the requirements of this section.

**Attachment C:**  
**Excerpt from a typical HRM LUB – Dartmouth**

**SECTION 32A: WATERCOURSE SETBACKS AND BUFFERS**

- 32A(1)(a) No development permit shall be issued for any development within 20 metres of the ordinary highwater mark of any watercourse.
- 32A(1)(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 60 metres.
- 32A(1)(c) Within the required buffer pursuant to clauses (a) and (b), no excavation, infilling, tree, stump and other vegetation removal or any alteration of any kind shall be permitted in relation to a development.
- 32A(1)(d) Within the required buffer pursuant to clauses (a) and (b), activity shall be limited to the placement of one accessory structure or one attached deck not exceeding a footprint of 20 m<sup>2</sup> or a combination of an accessory structure and attached deck not exceeding 20 m<sup>2</sup>, fences, boardwalks, walkways and trails not exceeding 3 metres in width, wharfs, boat ramps, marine dependent uses, fisheries uses, conservation uses, parks on public lands, historic sites and monuments, and public road crossings, driveway crossings and wastewater, storm and water infrastructure.
- 32A(1)(e) Notwithstanding clause (a), the required buffer for construction and demolition operations shall be as specified under the applicable CD Zone.
- 32A(1)(f) Within the buffer required pursuant to clause (e), no excavation, infilling, tree, stump and other vegetation removal or any alteration of any kind shall be permitted in relation to a development.
- 32A(2) Notwithstanding subsection (1), where an existing residential main building is located within the required buffer, accessory structures, subject to meeting other requirements of this by-law, shall be permitted provided they are located no closer to the watercourse than the existing main building.
- 32A(3) Where the configuration of any existing lot, including lots approved as a result of completed tentative and final subdivisions applications on file prior to the effective date of the Regional Municipal Planning Strategy, is such that no main building could be located on the lot, the buffer distance shall be reduced in a manner which would provide the greatest possible separation from a watercourse having regard to other yard requirements.

- 32A(4) Notwithstanding subsection (1), nothing in this by-law shall prohibit the removal of windblown, diseased or dead trees, deemed to be hazardous or unsafe.
- 32A(5) Notwithstanding subsection (1), the selective removal of vegetation to maintain the overall health of the buffer may be authorized by the Development Officer where a management plan is submitted by a qualified arborist, landscape architect, forester or forestry technician.
- 32A(6) Every application for a development permit for a building or structure to be erected pursuant to this section, shall be accompanied by plans drawn to an appropriate scale showing the required buffers, existing vegetation limits and contours and other information including professional opinions, as the Development Officer may require, to determine that the proposed building or structure will meet the requirements of this section.
- 32A(7) Subsection (1) does not apply to lands within the area designated on the Generalized Future Land Use Map in the Regional Municipal Planning Strategy as Harbour.

**Attachment D:**

**Comparison of Eastern Passage / Cow Bay watercourse buffers to a typical HRM example**

Subsection	Eastern Passage / Cow Bay LUB (Section 4.18)	Typical LUB (Section 32A of the Dartmouth LUB)
1(a)	No development permit shall be issued for any development within a required buffer:	
	<ul style="list-style-type: none"> <li>• 61 m - Atlantic Ocean, Cow Bay or Barrier Pond</li> <li>• 20 m - Cow Bay River, north of Caldwell Road</li> <li>• 30 m - any other watercourse</li> </ul>	<ul style="list-style-type: none"> <li>• 20 m - any watercourse</li> </ul>
1(b)	Where slopes are greater than 20% within the required buffer, the buffer shall increase by 1 metre for each additional 2% of slope, to a maximum of 60 metres.	
1(c)	Within the required buffer, no excavation, infilling, tree, stump and other vegetation removal or any alteration of any kind shall be permitted <u>in relation to a development</u> .	
1(d)	Within the required buffer, activity shall be limited to:	
	board walks, walkways and trails - not exceeding 3 metres in width - within the required buffer of the Cow Bay River or Smelt Brook only	boardwalks, walkways and trails - not exceeding 3 metres in width
	[Not permitted.]	an accessory structure, or attached deck, or combination - not exceeding a footprint of 20 m <sup>2</sup>
	[Not permitted.]	fences
	[Not permitted.]	wharfs, boat ramps, marine dependent uses, fisheries uses
	[Not permitted.]	conservation uses, parks on public lands, historic sites and monuments
	[Not permitted.]	public road crossings
	[Not permitted.]	driveway crossings
[Not permitted.]	wastewater, storm and water infrastructure	
1(e)	Notwithstanding clause (a), the required buffer for construction and demolition operations shall be as specified under the applicable CD Zone	

Subsection	Eastern Passage / Cow Bay LUB (Section 4.18)	Typical LUB (Section 32A of the Dartmouth LUB)
1(f)	Within the buffer required pursuant to clause (e), no excavation, infilling, tree, stump and other vegetation removal or any alteration of any kind shall be permitted <u>in relation to a development</u> .	
2	Notwithstanding subsection (1), where a residential main building already exists within the required buffer, accessory structures shall also be permitted within the required buffer (as long as they are located no closer to the watercourse than the existing main building).	
3	Where the shape of any existing lot is such that no main building could be located on the lot, the buffer distance shall be reduced:	
	<ul style="list-style-type: none"> <li>• 30m - Atlantic Ocean, Cow Bay Lake or Barrier Pond</li> <li>• 15m - any other watercourse</li> </ul>	<ul style="list-style-type: none"> <li>• in a manner which would provide the greatest possible separation from a watercourse (while having regard to other yard requirements)</li> </ul>
4	Notwithstanding subsection (1), nothing in this by-law shall prohibit the removal of windblown, diseased or dead trees, deemed to be hazardous or unsafe.	
5	Notwithstanding subsection (1), the selective removal of vegetation to maintain the overall health of the buffer may be authorized by the Development Officer where a management plan is submitted by a qualified professional.	
6	Every development permit application shall be accompanied by plans showing the required buffers, as well as any other information to allow the Development Officer to determine that the proposal will meet the requirements of this section.	
7	[There is no exemption for Harbour-designated lands within EP / CB.]	Subsection (1) does not apply to lands within the area designated on the Generalized Future Land Use Map in the Regional MPS as Harbour