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## **Planning Advisory Committee Meeting Agenda**

**Thursday, November 23, 2023 – 7:00 p.m.**

**MODL Council Chambers, 10 Allee Champlain Drive, Cookville NS**

**In Person and Via Audio and Video Conference**

- 1. Call To Order**
  - 1.1. Mi'kma'ki Territorial Acknowledgement
- 2. Review of Procedure for Public to Address the Committee – Chairperson (below)**
- 3. Approval of Agenda** (any other items to be added)
- 4. Approval of Minutes of Thursday, October 12, 2023, & Thursday, October 26, 2023**
- 5. Business Arising from Minutes**
- 6. Planning Advisory Committee Matters**
  - 6.1. Amendments to the Riverport & District Secondary Planning Strategy ..... 1-11
- 7. Heritage Advisory Committee Matters**
- 8. Added Items**
- 9. In Camera**
- 10. Next Meeting Date: Thursday, January 25, 2024**
- 11. Adjournment**

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### **Procedure for Addressing the Committee**

An opportunity will be provided to all citizens to address the Committee on each agenda item shown on this Agenda or added to the Agenda by the Committee. Individuals who wish to address the Committee are asked to note the following:

- On each matter on the Committee's Agenda, the Chair will seek public comment upon the completion of staff's presentation.
- Each person shall state their name.
- All statements and questions shall be directed to the Chairperson.
- Presentations shall be limited to 10 minutes. Persons wishing to address the Committee a second time will be given opportunity to do so once all others in attendance have had the opportunity to address the Committee. Persons addressing the Committee for a second time shall limit their presentations to 5 minutes.

Anyone wishing to address the Committee on a matter not included on this Agenda can have the matter added to the next meeting's Agenda by contacting Jeff Merrill, Director of Planning, at 902-541-1340 or by email at [planning@modl.ca](mailto:planning@modl.ca)



## Municipality of the District of Lunenburg

### Staff Report

**Report to:** Riverport & District Area Advisory Committee  
**Submitted by:** Elizabeth Carr, Planner I  
**Date:** November 23, 2023  
**Re:** Amendments to the Riverport & District Secondary Planning Strategy and Land Use Bylaw.

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### Recommendations

Staff recommended that the Riverport Area Advisory Committee respectfully recommend to the Planning Advisory Committee that:

1. Council approves the following proposed amendments to the Riverport Secondary Planning Strategy:
  - a. Revise policies 4.2.1 and 4.2.2 to only include the following lands within the Environmental Protection Designation and Environmentally Sensitive zone:
    - i. Gaff Point
    - ii. Murphy Wetland
  - b. Repeal policy 4.2.3.
  - c. Add a policy to section 4.2 stating that all wetlands and salt marshes in Riverport shown on the Nova Scotia Department of Natural Resources Wetlands and Coastal Habitats Inventory, including the tree covered wetland at Hirtles Pond, will be included in Schedule "B" – Development Constraints map.
  - d. Add a policy to section 4.2, pursuant to the previous policy, stating that properties can be removed from Schedule "B" where study of a wetland or salt marsh, by a qualified person, shows that land depicted in Schedule "B" is not wetland or salt marsh.

2. Council approve the proposed amendment to the Riverport Land Use Bylaw to remove wetland areas captured within Schedule “A” – Zoning map that are currently zoned Environmentally Sensitive (ES), including the tree covered wetland at Hirtles Pond, and add these areas to Schedule “B” – Development Constraints map.
3. Council repeal policy 4.13 ‘Accessory Uses’ of the Riverport & District Land Use Bylaw and replace it with a revised policy titled ‘Miscellaneous Minor Accessory Structures’ in alignment with similar policies in MODL’s other Land Use Bylaws.

**The Riverport & District Area Advisory Committee rejected staff’s recommendations pertaining to development near wetlands, and proposed the following recommendation to the Planning Advisory Committee:**

- **The Riverport & District Area Advisory Committee respectfully recommend to the Planning Advisory Committee that no changes be made to Riverport & District’s existing policies around developing near wetlands due to the following concerns:**
  - **Unclear definition for the term ‘wetland’.**
  - **Unclear qualifications for designated professionals.**
  - **Outdated maps from Province.**

**The Riverport & District Area Advisory Committee approved of staff’s recommendation to repeal and replace the ‘Accessory Uses’ policy in the Riverport & District Land Use Bylaw and respectfully recommends to the Planning Advisory Committee that:**

- **Council repeal policy 4.13 ‘Accessory Uses’ of the Riverport & District Land Use Bylaw and replace it with a revised policy titled ‘Miscellaneous Minor Accessory Structures’ in alignment with similar policies in MODL’s other Land Use Bylaws.**

## **Background**

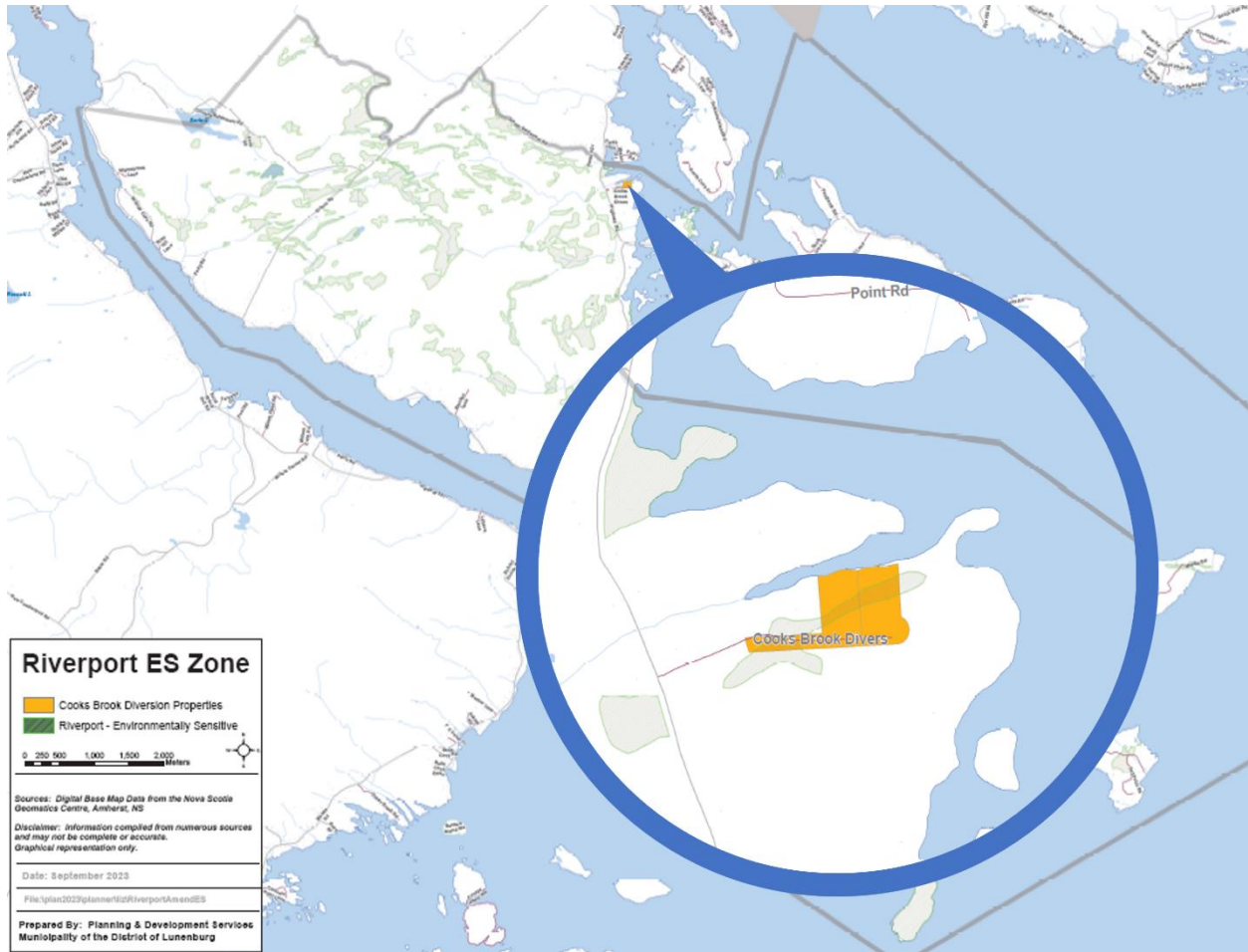
The proposed amendments fall into two categories:

- Regulating development near wetlands.
- Accessory Uses policy.

## **Wetland Amendments**

A situation has arisen related to development near wetlands that may require amendments to Riverport’s Secondary Planning Strategy (SPS) and Land Use Bylaw (LUB). There are two properties, that according to Schedule “A” – Zoning Map in the Riverport LUB, are zoned Environmentally Sensitive (ES) due to the presence of wetlands or salt marshes that have been

identified through the Department of Natural Resource's Wetlands and Coastal Habitats Inventory.



Map of Riverport showing Environmentally Sensitive zones and the two properties in question.

Section 4.2.2 of Riverport's SPS states that ES zones are "no build" zones; however, section 4.2.3 states that rezoning of ES zones is possible provided that a survey confirming that no wetland is present has been conducted by a designated professional.

A qualified professional has surveyed both properties in question and has determined that there are no wetlands or salt marshes present. It is known that the provincial wetland mapping has not been updated in several years, and it is possible that there could be inaccuracies within MODL's ES zone mapping as it is largely based on the provincial mapping.

As mentioned above, rezoning of ES zones is permitted provided that a survey has been conducted by a designated professional; however, because it is known that the provincial wetland mapping is outdated, it is possible that there will be similar requests for rezoning in this area in the future which has prompted staff to investigate other ways that development near wetlands could be regulated in Riverport in the future.

### **Accessory Uses Amendments**

An amendment to section 4.13 'Accessory Uses' in the Riverport & District SPS has been proposed to align Riverport's 'Accessory Uses' policy with sections titled 'Miscellaneous Minor Accessory Structures' in MODL's other existing SPS documents.

Riverport's current 'Accessory Uses' policy refers only to use of land that does not require a development permit and does not refer to the types of accessory **structures** that are permitted without a development permit. The revision of section 4.13 will provide more details about the types of structures that may be permitted as an accessory structure without a development permit.

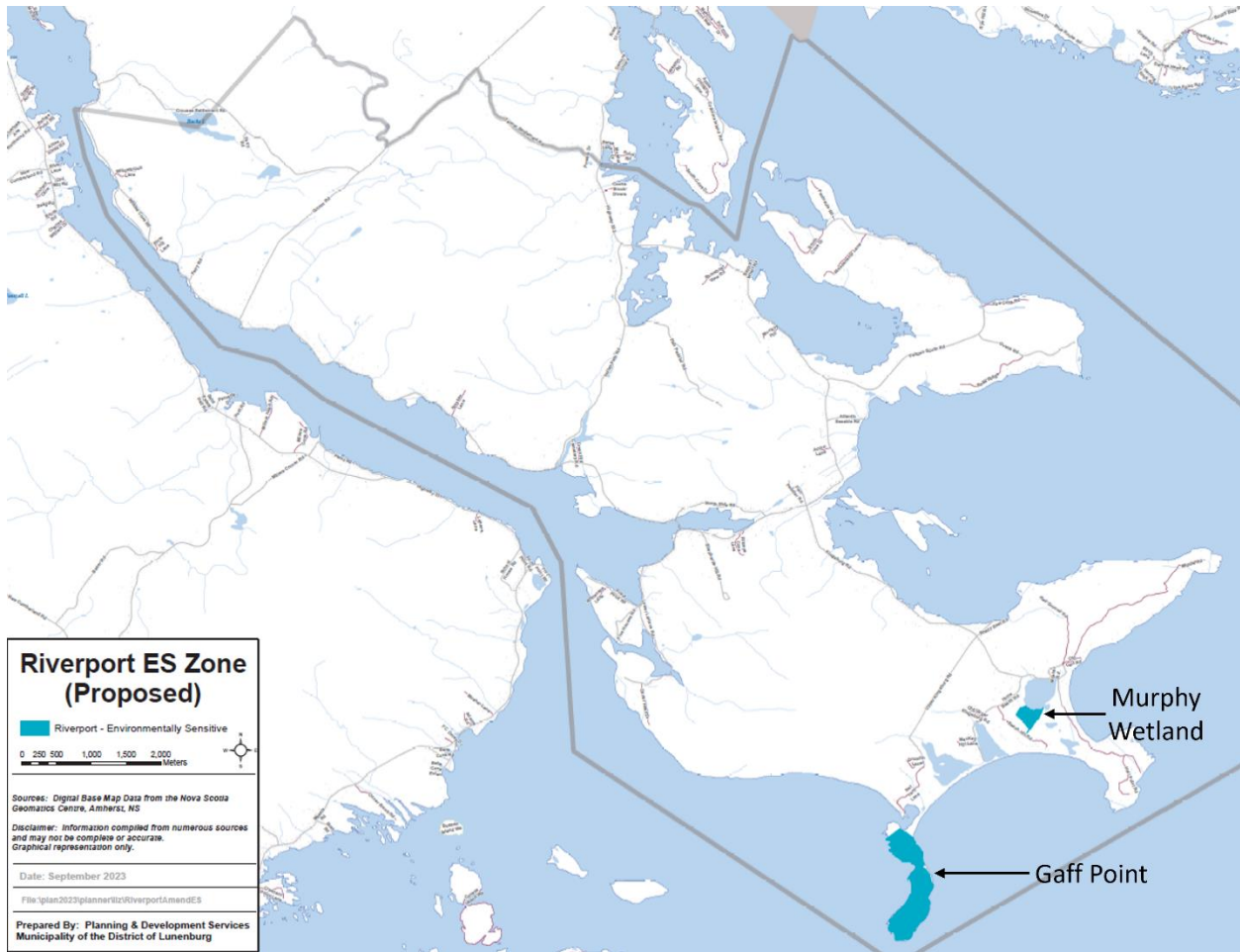
### **Discussion**

Planning staff brought the proposed amendments to the Riverport & District SPS and LUB to Council on September 12, 2023. Council referred the amendments to the Riverport & District Area Advisory Committee and directed staff to hold a public information session for the proposed amendments.

Per MODL Policy 066 – Public Engagement Policy s. 8 and 9 respectively, a public information session was scheduled, and notice of the proposed amendments and public information session were posted a week in advance for the public and the Area Advisory Committee members. Public postings were also made on MODL's website, Facebook page, and engage website to inform the public of the information session and encourage interested residents to attend.

### **Proposed Wetland Amendments**

The proposed amendments involve adding the identified wetlands and salt marshes from ES zones to Schedule "B" – Development Constraints map. For clarity, there are lands that have been zoned ES by the Municipality such as Gaff Point and the Murphy Wetland owned by the Kingsburg Coastal Conservancy that do not fall within the provincial wetland mapping. These lands would remain on the zoning map as ES zones which would prohibit any future development in those areas.



Map of Riverport showing Gaff Point and the Murphy Wetland.

Adding wetlands captured within the ES zones to the Development Constraints map would continue prohibiting development in areas identified as wetlands or salt marshes but would also provide the opportunity for property owners to dispute the presence of a wetland through a survey conducted by a designated professional. This way of regulating development near wetlands would be like the wetlands policy in the Hebbville SPS and LUB.

### **Village of Hebbville Wetlands Policy**

The Village of Hebbville has wetlands mapped in Schedule “C” Significant Watercourses and Identified Wetlands which were identified using the provincial Wetlands and Vegetation Classification System Inventory. Per Hebbville’s wetland policy, no development permit application will be issued until the province has confirmed that the proposed development would not affect, or be inconsistent with, any related provincial policies, and where necessary, would satisfy any wetlands-related approvals processes.

## Other Considerations

### Discussion with Wetland Expert from Nova Scotia Environment

Planning staff met with a wetland expert from the Nova Scotia Department of Environment to discuss the proposed amendments to the Riverport SPS and LUB and to clarify the provincial regulations for developing near wetlands.

Staff asked about the provincial approvals needed for infilling wetlands. The provincial expert stated that a permit from the Department of Environment and Climate Change is required for alterations to wetlands. The province also requires no net loss of wetlands meaning if a wetland is infilled it is expected to be compensated for at a 2:1 ratio. For more significant wetlands, the ratio may be increased to 4:1.

Staff also asked whether the existing provincial wetland mapping would be updated. The wetland expert confirmed that the existing mapping is outdated and mentioned that though there is currently no timeline for updating the existing wetland maps, there is support within the Department of Environment for updating the maps.

The Department of Environment recently released what has been described as a 'routine clarification' of its wetland policy. The clarification of the policy included that wetlands of special significance (WSS) are limited to:

- Wetlands known to support threatened and endangered species only, and exclude vulnerable/special concern species (for which there are no prohibitions to harm).
- Only a portion of a wetland directly supporting species at risk, as determined by a qualified expert.
- The portion of wetlands that overlap with a designated Ramsar site (sites of international importance), provincial wildlife management area, provincial park, nature reserve, wilderness area or lands owned or legally protected by non-government charitable conservation land trusts.
- Wetlands where a proponent at the time of their application, through their own fieldwork, has included an observation of a species at risk in the wetland and the wetland meets the habitat requirements of that species. Databases of historic occurrences of species at risk will no longer be considered."

Though the Department of Environment has stated that nothing has changed within the policy, the clarification of the policy's contents concerned environmentalists who fear that it will reduce the number of wetlands protected by the province. The wetland expert stated that they were unsure what impact the clarification of the wetlands policy would have on updating the mapping of provincially identified and protected wetlands.

After the discussion with the provincial expert, staff investigated how neighbouring municipalities are mapping development constraints such as wetlands. Planning strategies and land use bylaws from Cumberland, East Hants, King's, and Queens were reviewed and it was found that most of the municipalities rely on provincial mapping and regulations to protect wetlands. Some of the municipal documents that were reviewed also included requirements for developers to disclose any wetlands on their property before it is developed, or requirements to disclose any wetlands when applying for amendments to the land use bylaw.

## **Proposed Accessory Uses Amendments**

To accommodate future regulation of accessory structures, it is proposed that policy 4.13 'Accessory Uses' of the Riverport & District Land Use Bylaw is repealed and replaced with a revised policy titled 'Miscellaneous Minor Accessory Structures' in alignment with similar policies in MODL's other Land Use Bylaws.

## **Other Considerations**

### **Discussion with Municipal Development Officer**

Staff discussed the proposed amendment to the 'Accessory Uses' policy with the Development Officer and determined that the proposed amendment would provide more clarity about the types of accessory structures permitted without a development permit on properties with an existing structure and would change the language to reflect regulation of structures rather than land use.

## **Feedback from Public Meetings**

### **Public Information Session**

A public information session was held on the evening of September 20, 2023. Councilor Whynot was in attendance, but no community members attended the event. Staff reviewed the proposed amendments with the Councilor and adjourned the meeting.

### **Riverport & District Area Advisory Committee**

The Riverport & District Area Advisory Committee met on October 11, 2023, at 6:30PM at the Riverport District Fire Department. There were a few members of the public in attendance as well as both the Area Advisory Committee Members Reid Whynot and Barry Olivella.

Staff provided a presentation with background on the current policies both for regulating development near wetlands and the 'Accessory Uses' policy, and covered details about the proposed amendments. Members of the public expressed that they were concerned about the speed at which the amendment was progressing and worried that the change in process would make it easier for people to develop near wetlands. Several questions were also brought forward including:



## 1. How do we define a wetland?

The province defines a wetland in the Environment Act 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.”

Nova Scotia’s Wetland Conservation Policy provides definitions for a variety of wetlands, marshes, and bogs, including the unique features associated with each type. Certain types of wetlands, including salt marshes, are categorized as Wetlands of Special Significance (WSS) by the province, which cannot be altered unless an alteration is required to maintain, restore, or enhance a WSS, or would provide a necessary public function. Aside from WSS, wetlands can only be altered if the proper Wetland Alteration Application or Environmental Assessment is completed and approved by the province.

Riverport’s ES zones are based on the province’s wetland mapping including provincially mapped WSS. Not all wetlands are captured in the province’s mapping because the map is known to be outdated and was based on aerial maps which have resulted in the underrepresentation of tree-covered wetlands and inaccurate wetland boundaries. MODL uses the province’s mapping as it is the best mapping available currently, and MODL relies on the provincial wetland delineators as part of the existing policy in Riverport. Through the Municipal Government Act, municipalities can regulate or prohibit development on land that is low-lying, marshy, or unstable which could include wetlands. We can use provincial mapping and apply municipal requirements to better protect wetlands from development.

- ## 2. What are the qualifications of a wetland delineator? Are the results of surveys disproving the presence of wetlands on a property ever verified by another professional?

Staff reached out to the Department of Environment to confirm the qualifications required for a designated professional assigned to delineate wetlands and were told that these professionals take a wetland delineation course and are trained under a senior wetland delineator until they are confident in their own assessment abilities.

Currently, the province only requires one survey conducted by a designated professional to disprove the presence of wetlands on a property. A suggestion received from members of the public and the Area Advisory Committee members in attendance included requiring surveys

conducted by more than one qualified professional to determine whether a wetland exists on a property, and, having some oversight for who is considered a qualified professional.

3. Is the province updating their wetland mapping?

Members of the public brought to staff's attention the possibility that the province is actively updating their wetland mapping. Staff reached out to the Department of Environment to confirm the existence of new wetland maps and it was clarified that the wetland maps the community were referring to are a new model for identifying wetlands on the ground and not a new map showing provincially protected wetlands.

Due to the questions and concerns brought forward by members of the public, there was hesitancy from the Area Advisory Committee to push staff's recommendation forward to the Planning Advisory Committee. As a result, there was a new recommendation put forward suggesting that no changes be made to the current process for regulating development near wetlands until a clear definition for wetlands and better mapping from the province can be procured.

## **Alternatives**

### **Wetland Amendments**

- Rezone the two properties in question that are currently zoned ES to Rural Three.

An alternative option is to rezone the two properties in question to an adjacent zone [Riverport has only two zone types making the adjacent zone Rural Three (RU-3)] which is already made possible through section 4.2.3 of the Riverport SPS that states,

“Pursuant to Policy 4.2.2, it shall be the policy of Council to rezone the Environmentally Sensitive (ES) Zone in the Land Use By-law to an adjacent zone where study of a wetland or salt marsh, by a qualified person, shows that land within the Environmentally Sensitive (ES) Zone is not wetland or salt marsh.”

Rezoning ES zones in Riverport is already permitted through the SPS; however, because it is known that the provincial wetland mapping is outdated, it is possible that there will be similar requests for rezoning in this area in the future which is why another recommendation has been proposed.

## **Next Steps**

The recommendations from the Riverport & District Area Advisory Committee will be taken to the Planning Advisory Committee meeting scheduled for the evening of November 23, 2023. Planning staff will add the item to the Planning Advisory Committee agenda, and per MODL

Policy 066 – Public Engagement Policy s. 10, will inform the public of the opportunity to attend the Planning Advisory Committee meeting via the Municipality’s website, social media pages, and an ad in the local newspaper.

The Planning Advisory Committee will discuss the matter and will consider the Area Advisory Committee’s recommendation and will then make their own recommendation that will be taken to the next Council meeting. If Council approves of the recommendation, it will conduct first reading where the intent to approve the amendment application will be made known. After Council’s first reading, a public hearing will be scheduled where members of the public will be able to voice their opinions on the matter and be heard by Council. Council will then make its final decision.

## Conclusion

Staff’s recommendation to the Riverport & District Area Advisory Committee was to recommend to the Planning Advisory Committee that Council approve of the proposed amendments to the Riverport Secondary Planning Strategy and Land Use Bylaw pertaining to the process for regulating development near wetlands, and the ‘Accessory Uses’ policy.

After discussions with both the Riverport Area Advisory Committee and members of the public, it was determined that more information about defining wetlands, the qualifications of provincial wetland delineators, and the provincial wetland mapping should be collected before any changes are made to the existing process for regulating development near wetlands. The Riverport Area Advisory Committee decided to reject staff’s recommendation to the Planning Advisory Committee, and instead recommended that Council not make any changes to the process at this time. The Riverport Area Advisory Committee did approve of staff’s recommendation pertaining to the ‘Accessory Uses’ policy.

All comments and concerns from the Planning Advisory Committee, Riverport Area Advisory Committee, and the public will be taken into consideration by Council.

Report Preparation	
<b>Department</b>	Planning & Development
<b>Report Prepared by</b>	Elizabeth Carr, Planner I
<b>Report Approved by</b>	Jeff Merrill, MCIP, LPP, Director of Planning & Development Services

## References

CBC News. (2023, September). Environmentalists question 'routine clarification' of Nova Scotia's wetlands policy. Retrieved from <https://www.cbc.ca/news/canada/nova-scotia/wetlands-environment-species-at-risk-tim-halman-1.6983094>

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