

CONSOLIDATED NEWFOUNDLAND AND LABRADOR REGULATION 1079/96

St. John's Urban Region Agriculture Development Area Regulations under the Lands Act (O.C. 96-249)

Amended by:
2001 c42 s45

CONSOLIDATED NEWFOUNDLAND AND LABRADOR REGULATION 1079/96 St. John's Urban Region Agriculture Development Area Regulations under the Lands Act (O.C. 96-249)

Under the authority of section 59 of the Lands Act and the Subordinate Legislation Revision and Consolidation Act , the Lieutenant-Governor in Council makes the following regulations.

REGULATIONS

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Short title

1. These regulations may be cited as the St. John's Urban Region Agriculture Development Area Regulations .

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Definitions

2. In these regulations

- (a) "Act" means the Lands Act ;
- (b) "agricultural impact assessment report" means a report based on an on-site inspection which reports the degree of agricultural impact;
- (c) "agriculture" means horticulture, fruit growing, grain growing, crop growing, seed growing, dairy farming, the breeding or rearing of livestock, the use of land as grazing land, meadow land, market gardens and nursery grounds and the use of lands for woodlands where that use is ancillary to the farming of land for another purpose;
- (d) "ancillary building" means a building other than a residence;
- (e) "appeal board" means an appeal board established under section 7;
- (f) "authority" means the authority established under section 3;
- (g) "building" means a structure, excavation, alteration or improvement placed on, over or under the land, and includes mobile structures and vehicles adapted or constructed for residential, commercial, industrial and other like uses and every part of a building and another structure used in connection with a building and all equipment, apparatus, or appliance attached to or installed in a building;
- (h) "commercial use" means use for the purpose of selling or offering for sale, goods, wares, merchandise or services and includes the storage of these goods, wares or merchandise;
- (i) "department" means the department presided over by the minister;
- (j) "developer" means a person who proposes a development approved by the authority for development or who undertakes a development;
- (k) "development", "developed" and "develop" means
 - (i) the erection, construction or placing of a building on, over or under land and includes the drainage and ditching of land in the development area,
 - (ii) the use of land for agricultural, commercial, industrial, recreational, residential or other purposes and includes land clearing, manure disposal, peat land uses, sod and topsoil removal, quarry uses, mine uses, road construction and silviculture, and
 - (iii) the change in use of land or buildings;
- (l) "development area" means the Agriculture Development Area of St. John's Urban Region established under the Act;
- (m) "farm" means land used for agriculture to produce a net income;
- (n) "farm development proposal" means a written report, approved by the department, of the present and proposed future operations of the farm for not less than 5 years describing the existing buildings and

uses of the farm and proposed improvements and uses including location, estimated cost, time table and method of implementing it, together with related plans or drawings showing the location of all lands and buildings and noting the uses of these accesses, roads, fences, drainage, manure disposal and watercourses and containing an identification system to relate to the plans or drawings to the written report;

(o) "industrial use" means a use for the purpose of manufacturing, processing, canning, preparing, reconditioning, breaking up, demolishing or treating of articles, a commodity or substance;

(p) "land" means a lot, plot, parcel or tract of land including land covered with water, buildings and a structure on, over or under the soil and fixtures which form a part of these;

(q) "livestock" means livestock as defined in the Livestock Act ;

(r) "mineral exploration" means exploration for minerals under a licence issued in accordance with the Mineral Act ;

(s) "mining uses" means the extraction of minerals for commercial or industrial purposes;

(t) "minister" means the minister appointed under the Executive Council Act to administer the Act;

(u) "municipal council" means the council of the City of Mount Pearl and the City of St. John's or a council as defined in the Municipalities Act ;

(v) "non-conforming uses" means a use of land or buildings which does not conform to a provision or requirement of the regulations but which was lawfully established before the coming into effect of these regulations;

(w) "on-site inspection" means the physical inspection of the proposed development site and the local surroundings by a representative of the authority with the purpose of compiling information specified by the department in order to prepare an agricultural impact assessment report;

(x) "peat land" means land composed of organic soil;

(y) "permit" means a permit granted under these regulations;

(z) "petroleum and natural gas exploration" means exploration for petroleum and natural gas under a permit or licence issued in accordance with the Petroleum and Natural Gas Act ;

(aa) "public utility" means a public utility as defined in the Public Utilities Act ;

(bb) "quarry use" means the extraction of quarry materials in accordance with the Quarry Materials Act ;

(cc) "recreation use" means use for leisure time activities, rest, sports, outdoor games or other forms of relaxation that do not require permanent buildings or structures;

(dd) "residence" means a building or structure or part of a building or structure used or intended to be used for full-time human habitation and containing sleeping accommodations, cooking and toilet facilities and includes a mobile home;

(ee) "road" means a highway, road, street or way;

(ff) "Schedule" means the Schedule attached to the St. John 's Urban Region Development Order , Consolidated Newfoundland and Labrador Regulation 990/96;

(gg) "sod removal" means the removal of that portion of the topsoil which contains grass and plants together with their matted roots;

(hh) "summer cottage" means a structure with or without cooking facilities which is primarily intended or designed for use or occupation for recreational purposes or occasional living whether privately or for rental; and

(ii) "topsoil" means the surface portion of the soil including the surface A and B soil horizons (pedon) down to the parent material, as defined by the Canadian System of Soil Classification, 1987.

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Authority

3. (1) A provision or regulation of the Urban and Rural Planning Act , the Lands Act , the Quarry Materials Act , the Mineral Act or the Municipalities Act , provisions of the building code, fire code, electrical code and other ancillary codes, building regulations, health regulations, waste disposal regulations and other regulations controlling the use of land, in force in the development area, apply to a development permitted under these regulations.

(2) These regulations shall apply to the area described in the development area of St. John's Urban Region Agriculture Order, and subsequent amendments as described in the Schedule.

(3) The minister shall appoint an authority consisting of at least 5 people including a chairperson and a secretary to carry out all powers and duties conferred and imposed upon the authority by these regulations.

(4) The authority may include representatives from the agricultural division of the department one of whom shall be the chairperson, a Department of Forest Resources and Agrifoods, Forest Resources Division, representative, a Department of Municipal and Provincial Affairs representative, a Department of Environment and Labour representative and a member of the community.

(5) The authority shall consider applications under these regulations, approve and issue permits or notices of approval, refuse applications, cancel permits and exercise all other powers and duties conferred and imposed upon the authority under these regulations.

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Control of development

4. (1) A development shall not be carried out within the development area described in the Schedule except in accordance with these regulations.

(2) A person shall not carry out development within the development area unless a written permit or notice of approval for the development has been issued by the authority.

(3) A permit or notice of approval shall not be issued for development within the development area unless that development conforms to

- (a) the appropriate provisions of these regulations; and
- (b) a municipal or local area plan in effect.

(4) The authority shall consider an application for development and make a decision within 30 days from the date of receipt of the completed application.

(5) Where additional information is required from a person other than the applicant, the authority shall give notice to the applicant and set a date by which a decision can be rendered.

(6) The authority may request additional information from the applicant and where the additional information is not provided within 30 days of the request, the application shall be considered to be refused.

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Administration

5. (1) Application forms for development shall be made available through the department's regional office and through the offices of municipal councils and the Cities of Mount Pearl and St. John's, any part of whose planning area or area of operation is included within the development area.

(2) Three members of the authority in attendance shall constitute a quorum for the purpose of considering an application for development.

(3) The authority shall keep a public register of all applications for development and shall enter into that register the decision of the authority on each application and the result of an appeal of that decision.

(4) The authority may attach to a permit or notice of approval conditions that it considers necessary for the proposed development to meet the requirements of these regulations.

(5) A permit or notice of approval shall expire if not exercised within one year or another period that may be stated on that permit or notice and may be renewed upon application before expiration of the first permit year for a further period of one year, provided construction or development is initiated before the expiration of the first permit year.

(6) Failure by the applicant to initiate construction before the expiration of the first permit year shall require re-application to the authority.

(7) Where a temporary permit is considered to be necessary by the authority, it shall be issued for a period not exceeding 2 years, and where a temporary permit expires, is not renewed, is cancelled by the authority or is discontinued, the authority may order the person carrying out the development, the occupier of the site, the owner or all of them to remove all buildings or above ground erections, to cover or fill all wells or excavations, landscape as may be necessary and to remove all accesses.

(8) A person shall not erase, alter or modify a plan or drawing or specifications upon which a permit or a notice of approval to develop has been issued by the authority.

(9) There shall be kept posted in a conspicuous place on the land or premises where any work, matter or thing is being done for which a permit has been issued, a copy of the permit or poster as supplied

by the authority or local agency during the whole progress of that work, or the doing of that matter or thing until completion.

(10) The authority may require an applicant for a permit to give notice of the application by public advertisement in a newspaper circulating in the area or by another means considered necessary.

(11) The authority may cancel a permit or notice of approval for failure by the holder to comply with these regulations or conditions attached to the permit or notice of approval or an order made under the Act and the authority may order the developer, or the owner to remove all buildings or erections above ground, to cover or fill all wells or excavations, landscape as may be necessary and to remove all accesses.

(12) The persons carrying out an order of the authority shall put the site in a clean and sanitary condition to the satisfaction of the authority.

(13) The authority, a member of the authority and officers and inspectors of the department authorized by the minister, may at all reasonable times enter upon a public or private land and may at all reasonable times enter a development or building upon the land, excluding a private dwelling to obtain information relating to a development which the authority is empowered to regulate.

(14) A person representing the authority shall keep a record of a violation of these regulations which comes to that person's knowledge and report that violation to the authority.

(15) Where a developer fails to obtain a permit or fails to comply with these regulations or with a condition of a permit or notice of approval, the authority may

(a) issue an order directing the developer to stop work on a development and that order shall state the nature of the infraction, prescribe remedial action and shall state the consequences of failure to comply with that order pending determination by the courts; and

(b) take legal action against that developer and shall notify that person of the nature of the infraction and prescribe remedial action.

(16) Where an application has been refused by the authority or denied by the minister under appeal, a subsequent development application made within 2 years of the date of the original application for the same purpose on the same parcel of land shall not be accepted by the authority unless there has been a material change in circumstances, or an applicable amendment to these regulations.

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Applications

6. (1) An application for a permit for a development, a part of which is located within the jurisdiction of a municipal council shall be submitted to that agency on those forms that are prescribed by the authority and every applicant shall provide with the application those plans, specifications, drawings and other documents that the authority requires.

(2) The municipal council shall refer the application for a permit to the authority.

(3) An individual making a development application shall be 19 years of age at the time of application.

(4) The authority shall consider an application under subsection (1) and

(a) issue a notice of refusal and the specific regulations resulting in refusal; or

(b) issue a notice of approval subject to the approval of the municipal council as is applicable, and in either case, the notice shall be sent to the municipal council.

(5) On receipt of a written notice of refusal from the authority, the municipal council shall issue a written notice of refusal to the applicant.

(6) On receipt of a copy of a written notice of approval of an application from the authority, the municipal council shall complete its consideration of the application and

(a) if the application meets the requirements of an applicable municipal or local area plan and regulations, the municipal council shall issue a permit for the development to proceed, subject to a condition imposed by the authority or a condition under the local plan or regulations; or

(b) if the application does not meet with the requirements of an applicable municipal or local area plan or regulation, then the municipal council shall issue a notice of refusal stating the reasons for refusal in the normal manner,

and the municipal council shall send a copy of the notice or permit to the authority.

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Appeal

7. (1) Where the authority refuses an application for a permit or grants an application subject to conditions, the applicant may appeal in writing to the appeal board against that refusal or those conditions within 30 days after the applicant is notified of the decision of the authority by the appropriate municipal council.

(2) The minister shall appoint an independent appeal board consisting of at least 3 members.

(3) The applicant shall be notified of the time and place of the appeal hearing and has the right to appear and give evidence.

(4) The appeal board, in a recommendation which reverses or varies the decision appealed from, shall state its reasons for doing so and state why the decision appealed was not in accordance with the intent of the Act or regulations.

(5) The appeal board shall record in a minute book the attendance and proceedings of the board at all hearings, including a record of hearing of every appeal.

(6) The appeal board recommendations shall be communicated in writing to the minister who shall make the final decision on the appeal and the minister's decision is final and binding upon all parties.

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Use zones

8. Agriculture zones as indicated in the Schedule shall be controlled by these regulations.

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Public utilities

9. Buildings, underground installations or transmission lines shall not be constructed, erected, placed or installed by a public utility as defined in the Public Utilities Act without written permission from the authority.

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Road construction

10. Roads shall not be constructed or re-aligned without the prior written permission of the authority.

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Ancillary buildings

11. Ancillary buildings shall not be permitted unless the buildings

(a) conform to a farm development proposal approved by the authority; or

(b) conform to another development which has been approved by the authority.

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Sod removal

12. Sods shall not be removed, sold or otherwise disposed of except

(a) in conjunction with the excavation of a site for the purpose of a development approved by the authority;

(b) sod farming on peat land as approved by the authority; or

(c) as permitted subject to terms and conditions recommended by the department and approved by the authority.

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Topsoil removal

13. Topsoil shall not be removed, sold or otherwise disposed of except in conjunction with the excavation of a site for a purpose approved by the authority.

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Non-agricultural residential development

14. (1) Residential development not directly related to farming shall not be permitted except

(a) where there is a minimal agricultural impact from the proposed development as determined by the authority; and

(b) where the location, size and frontage of the lot is in conformity with the municipal plan and approved by the authority.

(2) Notwithstanding subsection (2), one residence for each son or daughter of persons who own and reside on land within the development area subject to conditions or restrictions contained in the owner's grant to the land may be permitted provided that

(a) the location, size and frontage of the lot are in conformity with the municipal plan and approved by the authority;

(b) proof of title and residence on the land is supplied;

(c) a statement is supplied by the owner listing all his or her sons and daughters and stating which son or daughter is to construct the residence; and

(d) there is minimal agricultural impact from the proposed development as determined by the authority.

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Commercial or industrial development

15. Commercial or industrial development shall not be permitted except where there is minimal agricultural impact from the proposed development as determined by the authority.

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Exploration uses

16. Mineral, petroleum and natural gas exploration and the granting of permits and licences for that exploration are not subject to these regulations.

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Non-conforming uses

17. (1) A non-conforming use made of land and buildings may be continued, although not conforming to these regulations, excepting those continuing uses that degrade or destroy the soil resource.

(2) A building used for a non-conforming use shall not be replaced or expanded except where

(a) an on-site inspection finds that there is minimal agricultural impact from the proposed replacement or expansion as determined by the authority; and

(b) a proposed extension or replacement is not more than a 50% increase in floor area.

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Peat land uses

18. Peat land use, excluding peat quarry use, shall not be permitted unless it conforms to a farm development project approved by the authority.

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Quarry, mining and drilling uses

19. Quarry, mining or drilling uses shall not be permitted unless

(a) reclamation and rehabilitation is provided for; and

(b) the quarry, mining or drilling use shall not interfere with a farm development plan or with current or future agricultural use of the remainder of the development area.

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Summer cottage and recreation uses

20. (1) Summer cottages shall not be permitted.

(2) Recreation uses shall not be permitted unless the recreation use shall not interfere with current or future agricultural use of the development area and is not incompatible with a farm development proposal.

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Agricultural use

21. (1) Farm development may be permitted if the development conforms to a farm development proposal recommended by the department and approved by the authority.

(2) One single-family residence may be permitted in the third year of the approved farm development proposal upon departmental inspection to determine if development has progressed in compliance with the approved farm development plan.

(3) A second single-family residence in accordance with an approved farm development proposal may be permitted where necessary for the efficient operation of the farm.

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Non-interfering use

22. Notwithstanding another provision of these regulations, uses related to agriculture may be permitted by the authority where

(a) the use does not interfere with the existing or future use of the development area; and

(b) the use is not incompatible with a farm development proposal.

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Land severance

23. (1) Land severance shall not be permitted except where an on-site inspection finds there is minimal agricultural impact from the proposed severance.

(2) Development of a severed part is subject to the provisions of these regulations.

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Land transfer

24. (1) A grant, lease, licence, conveyance or other assurance executed or delivered after March 14, 1986 in relation to land located within the development area shall be registered, together with proof of the minister's permission to grant, lease, licence or convey that land, by the grantee, lessee, licensee or other person in whose favour the grant, lease, licence, conveyance or other assurance is executed or delivered in the Registry of Deeds established under the Registration of Deeds Act, not later than 30 days after the execution or delivery of the grant, lease, licence, conveyance or other assurance.

(2) Application for permission to grant, lease, license or convey land within the development area shall be made to the authority on forms referred to in subsection 6(1).

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Repeal

25. The St. John's Urban Region (Agriculture) Development Area Regulations, 1986, Newfoundland Regulation 40/86, are repealed.