How do the Top of Bank (TOB) Regulations Affect Me?

A vibrant and dynamic County, reflecting strong values and progressive attitudes, while balancing nature and economic growth in a global environment.

Prepared: January 2017
**What does Top of the Bank mean and how does it affect me?**

Top of Bank means *the upper edge of a valley, coulee, ravine, or watercourse (definition LUB B275/15)*. In the NSC Land Use Bylaw (LUB), there is a section that deals specifically with the Top of Bank and the requirements for setbacks, which are based on the depth of the valley, coulee, ravine or watercourse. Some developments cannot be built within the setbacks without having a geotechnical study done.

---

**What is a setback?**

Setbacks are where building restrictions are imposed on property owners. Local governments create setbacks through bylaws, usually for reasons such as safety, privacy and environmental protection. Road setbacks, for example, prevent property owners from building too close to the road, while Top of Bank setbacks place restrictions on building too close to the Top of Bank.

---

**What about an existing residence or building, how does this new setback affect me?**

It depends on where your development is located on your property.

If the structure is *not* located within the new TOB setback it is considered conforming or compliant with the current LUB.

If the structure is located within the new TOB setback and proper permits were obtained during the construction, the structure is considered legally non-conforming.

If the structure is located within the new TOB setback and proper permits were not obtained during the construction, the structure is considered non-compliant.

---

**What do compliant, conforming, legally non-conforming, and non-compliant mean?**

Compliant and conforming mean the structure meets both previous and current County LUB regulations.

Legally non-conforming means the existing building or developments do not conform to the present LUB regulations for that land. This means that the structure was conforming at the time of the development prior to the change in the LUB regulations and as such is “grandfathered” in. As per the MGA Section 643 (6), *if a non-conforming building is damaged or destroyed to the extent of more than 75% of the value above its foundation, the building may not be repaired or rebuilt except in accordance with the land use bylaw.*

Non-compliant means the structure does not conform to the current County LUB regulations and did not receive a development permit at the time it was constructed even though the LUB of the day required it.

---

**If I want to build a new structure, where do I start?**

Your first step should be to speak to the development officer at the County. We will review the property with you, see where the top of the bank is located, and what your setback should be.
What are best practices to keep in mind with a development on the top of the bank?

Best practices are the methods or techniques that are generally accepted as superior to ensure the stability of the bank. The Thurber Report contains a set of recommendations that should be adhered to for any developments within the vicinity of the valley slopes as well as general maintenance of the property:

- Locate all structures outside the development setback distance
- Do not clear trees or carry out grading (excavation, stockpiling, or filling) within the setback zone or on the valley slopes
- Do not discharge concentrated runoff over the valley slopes
- Do not pond water on the valley slope, within 100 m of the top of valley, or within the development setback zone (if greater than 100m)
- Do not install in-ground sprinkler systems within the setback distance or within 100 m from the top of the valley slope, whichever is less

What is a geotechnical assessment and how much does one cost?

Geotechnical Assessment means a detailed geotechnical investigation prepared by qualified professional geotechnical engineer licenced to practice in Alberta. Geotechnical assessments evaluate TOB stability and safety concerns, and include the following minimum components:

1) Site specific test holes
2) Piezometer to establish groundwater conditions
3) Site inspection to assess slope conditions and flag out the top and/or toe of the valley slope of a legal survey
4) Cross-sections to determine the geometry of the valley slopes and development area
5) Laboratory testing to establish soil strength properties
6) Slope stability analyses to assess the existing factor against sliding and to confirm that a factor of safety of at least 1.5 can be achieved at the location of the proposed development.

The results of the investigation shall be summarized in a geotechnical report, which is submitted to the County for review and acceptance. (definition LUB B275/15).

The cost of the report will vary greatly and is site specific. One can expect to spend a minimum of $15,000 on a report; however, this can increase substantially depending on slope conditions, development type, and availability of testing equipment.

What developments require a geotechnical assessment?

All development proposed to be constructed within the TOB setbacks and requiring a development permit, must get a geotechnical assessment except:

- An ancillary or farm building worth less than $50,000,
- An addition to a residence which is less than 3000 square feet.
**What is the Thurber Report and where did they get their information?**

In 2011, the County requested input from a geotechnical engineering firm (Thurber Engineering) to determine how to establish safe setback distances in the vicinity of river and creek valleys. The goals were to determine the top of the bank line and establish a framework of further site specific geotechnical investigation tasks for any developers wishing to encroach within the minimum setback distances. The firm studied the following valley sections:

1. *East valley slope of Peace River*
2. *East valley slope of the Smoky River*
3. *Heart River valley*
4. *Pats Creek*

They then compiled data using geology maps, geotechnical reports, topographical information, LiDAR data, air photos from 1999 and 1952, along with helicopter and limited foot reconnaissance by team members. Using the information collected Thurber developed recommended setback distances which were adopted by NSC Council in 2013 and into the Land Use Bylaw B275/15 in 2016.

---

**What will happen if I want to sell?**

There is nothing prohibiting the sale of your home to any buyer. Some buyers and mortgage lenders will require a compliance certificate at the time of purchase. The sale of this home would be no different than any other home in the County. It is recommended that if a potential buyer has concerns with the top of bank setbacks that they make an appointment to meet with County staff to review the regulations and site specific setbacks.

---

**What is a compliance certificate?**

A Compliance Certificate confirms that all structures and buildings on the Real Property Report (RPR) are up to the regulatory standards defined in the Northern Sunrise County Land Use Bylaw B275/15. This certificate also confirms that all required development permits were issued. The Compliance Certificate verifies the information gathered and documented by an Alberta Land Surveyor in the RPR.