



P.O. Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

**Item No. 13.1.2**  
**Harbour East - Marine Drive Community Council:**  
**October 14, 2021**

**TO:** Chair and Members of Harbour East - Marine Drive Community Council:

*-Original Signed-*

**SUBMITTED BY:**

\_\_\_\_\_  
Kelly Denty, Executive Director of Planning and Development

**DATE:** August 20, 2021

**SUBJECT:** **Case 23791: Discharge Development Agreement for 42 Townhouses on  
Brian Dickie Drive, Musquodoboit Harbour**

---

**ORIGIN**

Application by Birkshire Developments Inc.

**LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter (HRM Charter), 2008, c. 39, Part VIII, Planning & Development.*

**RECOMMENDATION**

It is recommended that Harbour East - Marine Drive Community Council:

1. Approve, by resolution, the Discharging Agreement, which shall be substantially of the same form as set out in Attachment A of this report; and
2. Require the Discharging Agreement be signed by the property owner within 240 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

## **BACKGROUND**

Birkshire Developments Inc. is applying to discharge the existing development agreement for a 42-unit townhouse project on lands (PID# 40714578) located on Brian Dickie Drive in Musquodoboit Harbour.

<b>Subject Site</b>	Brian Dickie Drive, Musquodoboit Harbour (PID# 40714578)
<b>Location</b>	Brian Dickie Drive north of Highway 7 in Musquodoboit Harbour (Maps 1 and 2)
<b>Regional Plan Designation</b>	Rural Commuter (within a Rural Commuter District Growth Center)
<b>Community Plan Designation (Map 1)</b>	Mixed Use Designation – Eastern Shore (West) Municipal Planning Strategy (MPS)
<b>Zoning (Map 2)</b>	Mixed Use (MU) - Eastern Shore (West) Land Use By-law
<b>Size of Site</b>	8.9 hectares (22.2 acres)
<b>Street Frontage</b>	31.5 metres (103.35 ft.) along Hwy #7
<b>Current Land Use(s)</b>	Undeveloped
<b>Surrounding Use(s)</b>	NSTIR Crown Reserve to the north; Cobblestone Lane to the east with single unit dwellings; Department of Natural Resources Public Trail system to the south; and NSTIR Crown Reserve to the west.

### **Proposal Details**

The applicant proposes to discharge the existing development agreement that permits a 42-unit townhouse project on Brian Dickie Drive in Musquodoboit Harbour. The existing development agreement was approved by Harbour East - Marine Drive Community Council (HEMDCC) on October 11, 2016<sup>1</sup>. A subsequent amendment to the development agreement was approved by HEMDCC on October 16, 2019 to extend the commencement and completion dates of the development<sup>2</sup>. The landowners have indicated their wish to discharge the development agreement in order to create approximately 9 residential lots through an as-of-right subdivision process in lieu of the townhouse development plan. The existing development agreement does not allow the option of development as per the underlying zone and the Regional Subdivision By-law, therefore the development agreement must be discharged in order to consider this option.

### **Policy Context**

The *Halifax Regional Municipality Charter* provides Council with a mechanism to discharge development agreements. Part VIII, Clause 244 identifies Council may discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owner. The *Charter* does not require a public hearing for the discharge of a development agreement or a portion thereof. A Community Council may discharge a development agreement by resolution.

## **COMMUNITY ENGAGEMENT**

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through providing information and seeking comments through the HRM website. Staff have not received any comments from the public relating to this application, and there is no requirement for a public hearing for this application.

---

<sup>1</sup> Case 18932: Original Staff Report and Development Agreement dated August 25, 2016  
<http://legacycontent.halifax.ca/Commcoun/east/documents/161011hemdcccitem6.1.1.pdf>

<sup>2</sup> Case 22376: Amending Development Agreement – Time Extension dated June 13, 2019  
<https://www.halifax.ca/sites/default/files/documents/city-hall/community-councils/191003hemdcc1313.pdf>

## **DISCUSSION**

The subject site is zoned MU (Mixed Use) in the Eastern Shore (West) Land Use By-law (LUB). The MU Zone permits a wide range of residential, commercial, community, and institutional land uses (Attachment B). Any of the MU uses could be permitted by-right in accordance with the MU zoning provisions if the existing development agreement is discharged. However, the intent is to develop the lands with residential lots should the Development Agreement be discharged. It should be noted that Brian Dickie Drive is a local private road that contains residential houses. The lots would have minimal presence on Highway 7 therefore, reducing suitability of these lands for more intensive commercial, community, and institutional land uses as permitted in the MU Zone.

### **Timelines for Execution of the Discharging Agreement**

The COVID-19 pandemic has resulted in difficulties in having legal agreements signed by multiple parties in short periods of time. To recognize the difficulty these unusual circumstances present, staff are recommending extending the signing period for agreements following a Council approval and completion of the required appeal period. While normally agreements are required to be signed within 120 days, staff recommend doubling this time period to 240 days. This extension would have no impact on the development rights held within the agreement, and the agreement could be executed in a shorter period of time if the situation permits.

### **Conclusion**

Staff have reviewed the proposal in terms of all relevant policy criteria and advise the request to discharge the existing development agreement is reasonably consistent with the intent of the Eastern Shore (West) Municipal Planning Strategy. The proposed discharge is also explicitly provided for in both the *HRM Charter* and the existing development agreement.

## **FINANCIAL IMPLICATIONS**

There are no budget implications. The applicant will be responsible for all costs, expenses, liabilities, and obligations imposed under or incurred in order to satisfy the terms of this proposed discharge agreement. The administration of the proposed discharge agreement can be carried out within the approved 2021-2022 budget and with existing resources.

## **RISK CONSIDERATION**

There are no significant risks associated with the recommendations contained within this report. This application may be considered under existing MPS policies. Community Council has the discretion to make decisions that are consistent with the MPS, and such decisions may be appealed to the N.S. Utility and Review Board. Information concerning risks and other implications of discharge the development agreement contained within the Discussion section of this report, if applicable.

## **ENVIRONMENTAL IMPLICATIONS**

No environmental implications are identified.

**ALTERNATIVES**

1. Harbour East - Marine Drive Community Council may choose to refuse to discharge the existing development agreement, and therefore, development on the property would remain subject to the conditions of the agreement. A decision of Council to refuse to discharge a development agreement is appealable to the Nova Scotia Utility and Review Board as per Section 262 of the *HRM Charter*.

**ATTACHMENTS**

Map 1: Generalized Future Land Use  
Map 2: Zoning

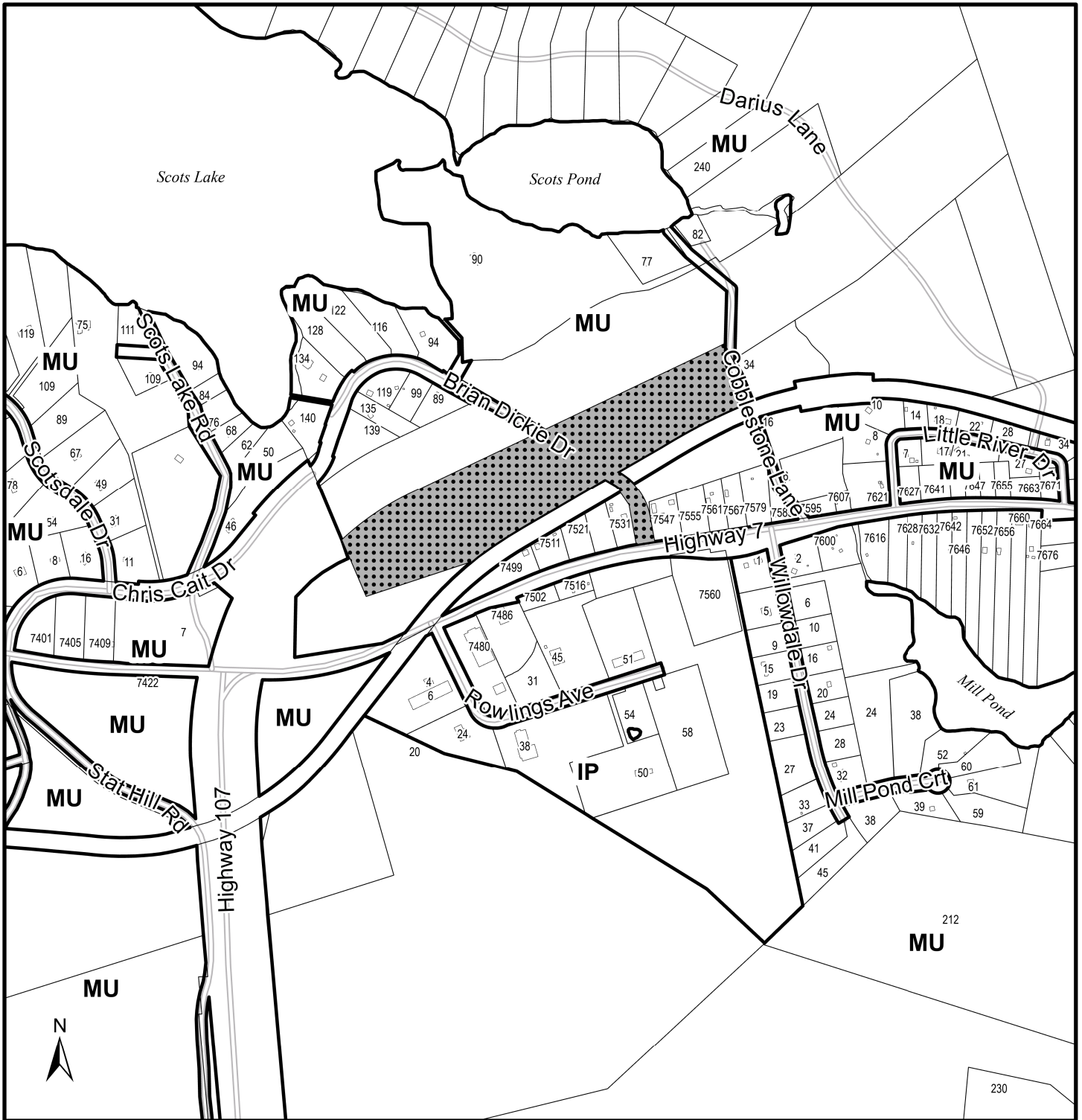
Attachment A: Proposed Discharging Agreement  
Attachment B: Eastern Shore (West) LUB - List of Permitted Uses in the MU Zone

---

A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Shayne Vipond, Planner III, 902.237.5395

---



**Map 1 - Generalized Future Land Use**

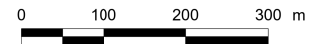
PID 40714578,  
Musquodoboit Harbour

**HALIFAX**

 Subject Area

**Designation**

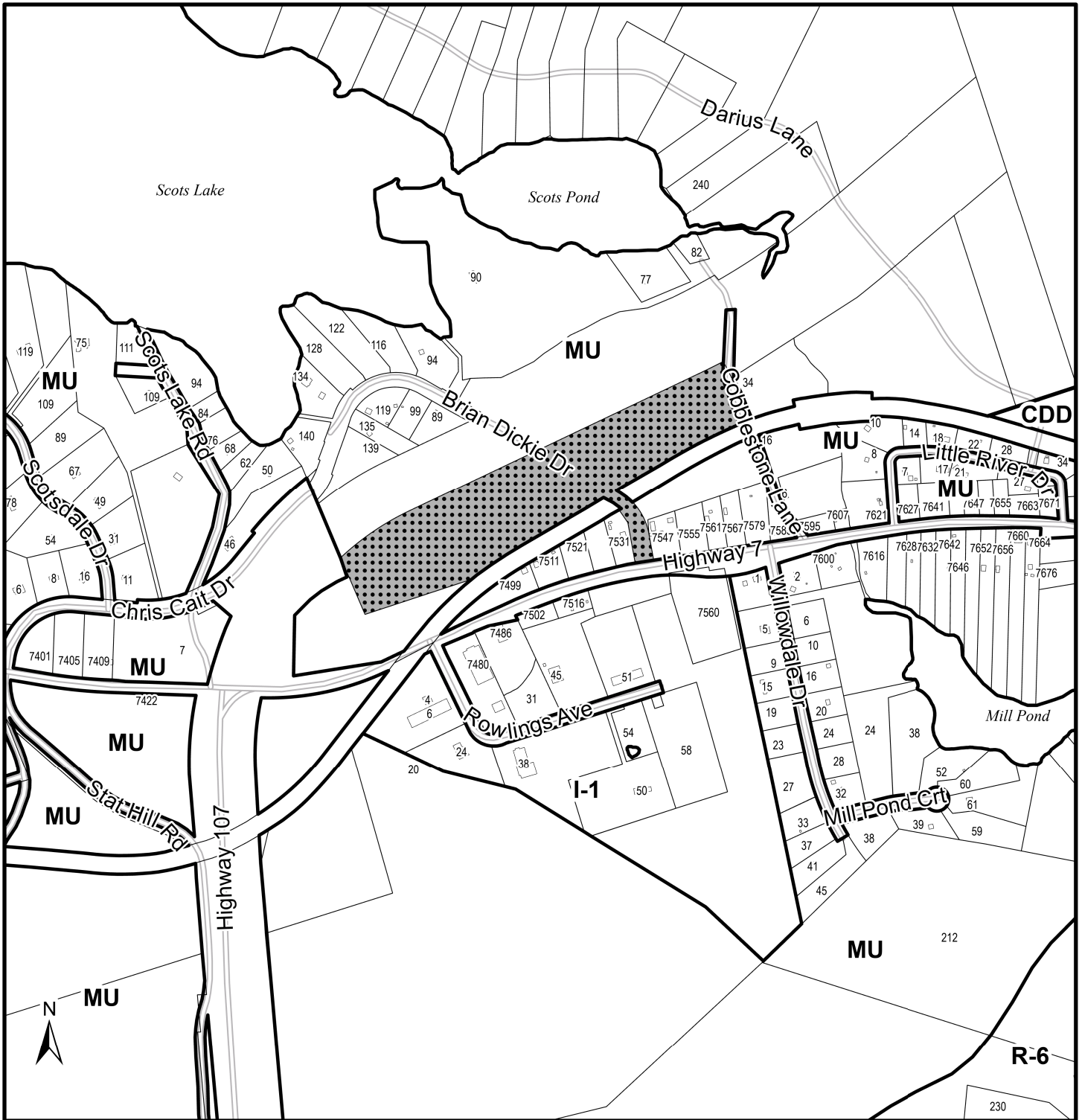
- MU Mixed Use
- IP Industrial Park



Eastern Shore (West)  
Plan Area

This map is an unofficial reproduction of a portion of the Generalized Future Land Use Map for the plan area indicated.


The accuracy of any representation on this plan is not guaranteed.



**Map 2 - Zoning and Location**

PID 40714578,  
Musquodoboit Harbour

**HALIFAX**

 Subject Area

**Zone**

- MU Mixed Use
- R-6 Rural Residential
- I-1 Business Industry
- CDD Comprehensive Development District



This map is an unofficial reproduction of a portion of the Zoning Map for the plan area indicated.

The accuracy of any representation on this plan is not guaranteed.

Eastern Shore (West)  
Land Use By-Law Area

**Attachment A: Proposed Discharging Agreement**

**THIS DISCHARGING AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

BETWEEN:

**[INSERT INDIVIDUAL'S NAME]**

an individual, in the Halifax Regional Municipality, in the Province of Nova Scotia (hereinafter called the "Developer")

OF THE FIRST PART

- and -

**HALIFAX REGIONAL MUNICIPALITY**

a municipal body corporate, in the Province of Nova Scotia (hereinafter called the "Municipality")

OF THE SECOND PART

**WHEREAS** the Developer is the registered owner of certain lands located at Brian Dickie Drive, Musquodoboit Harbour (PID 40714578) and which said lands are more particularly described in Schedule A hereto (hereinafter called the "Lands");

**AND WHEREAS** on October 11, 2016 the Harbour East - Marine Drive Community Council of the Halifax Regional Municipality approved an application to enter into a development agreement to allow for up to 42 townhouses on the Lands (Municipal Case Number 18932), and which said development agreement was registered at the Land Registration Office on December 22, 2016 as Document Number 110107886 (hereinafter called the "Original Agreement");

**AND WHEREAS** on October 16, 2019 the Harbour East - Marine Drive Community Council for the Municipality approved an amendment the Original Agreement to allow a five (5) year extension to the Commencement of Development date and a ten (10) year extension to the Completion of Development (Municipal Case Number 22376); and which said development agreement was registered at the Land Registration Office on November 22, 2019 as Document Number 115556665 (hereinafter called the "1<sup>st</sup> Amending Agreement")

**AND WHEREAS** the Original Agreement and the 1<sup>st</sup> Amending Agreement together comprise the Existing Development Agreement (hereinafter called the "Existing Agreement");

**AND WHEREAS** the Developer has requested the Existing Agreement be discharged from the Lands;

**AND WHEREAS** Section 244(2) of the *Halifax Regional Municipality Charter* states that Council may discharge a development agreement, in whole or in part, in accordance with the terms of the agreement or with the concurrence of the property owners;

**AND WHEREAS** the Harbour East – Marine Drive Community Council approved this request by resolution at a meeting held on **[Insert – date]**, referenced as case number 23791;

**THEREFORE** in consideration of the benefits accrued to each party from the covenants herein contained, the parties agree as follows:

1. The Existing Agreement is hereby discharged as it applies to the Lands and shall no longer have any force or effect.
2. Any future development of the Lands shall conform with all applicable provisions and requirements of the Eastern Shore (West) Land Use By-law, as amended from time to time.

**IN WITNESS WHEREAS** the said parties to these presents have hereunto set their hands and affixed their seals the day and year first above written.

**SIGNED, SEALED AND DELIVERED** in the presence of:

**(Insert Registered Owner Name)**

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_

**HALIFAX REGIONAL MUNICIPALITY**

**SIGNED, DELIVERED AND ATTESTED** to by the proper signing officers of Halifax Regional Municipality, duly authorized in that behalf, in the presence of:

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
MAYOR

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
MUNICIPAL CLERK



PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, the subscriber personally came and appeared \_\_\_\_\_ a subscribing witness to the foregoing indenture who having been by me duly sworn, made oath and said that \_\_\_\_\_, \_\_\_\_\_ of the parties thereto, signed, sealed and delivered the same in his/her presence.

\_\_\_\_\_  
A Commissioner of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_, before me, the subscriber personally came and appeared \_\_\_\_\_ the subscribing witness to the foregoing indenture who being by me sworn, made oath, and said that Mike Savage, Mayor and Iain MacLean, Clerk of the Halifax Regional Municipality, signed the same and affixed the seal of the said Municipality thereto in his/her presence.

\_\_\_\_\_  
A Commissioner of the Supreme Court  
of Nova Scotia

PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX, NOVA SCOTIA

## Attachment B:

### Eastern Shore (West) LUB - List of Permitted Uses in the MU Zone

#### PART 6: MU (MIXED USE) ZONE

##### 6.1 MU USES PERMITTED

No development permit shall be issued in any MU (Mixed Use) Zone except for the following:

##### Residential Uses

Single unit dwellings  
Two unit dwellings  
Senior citizen housing  
Existing multiple unit dwellings  
Mobile dwellings on individual lots  
Garden suites in conjunction with permitted single unit dwellings  
Daycare facilities  
Home business uses in conjunction with permitted dwellings  
Boat sheds

##### Commercial Uses

Antique shops  
Craft shops  
Commercial entertainment uses  
Convenience stores  
Bed and breakfasts  
Personal service shops  
Service shops  
Commercial schools  
Theatres and cinemas  
Trade contracting services and shops  
Medical clinics  
Restaurants including full-service, drive-in and take-out  
Service stations and automobile repair outlets  
Bakeries  
Banks and financial institutions  
Offices  
Funeral parlours and undertaking establishments including crematoriums  
Garden centers  
Outdoor display court  
Photographic studios  
Retail stores  
Grocery stores  
Variety stores

##### Cont. Commercial Uses

Research facilities  
Printing establishments  
Taxi and bus stations  
Veterinary clinics  
Warehousing and wholesaling  
Manufacturing and assembly uses  
Service industry uses  
Utility and communication buildings or structures  
Shipways, wharves and boathouses  
Marinas and charter boat services  
Wilderness and recreation outfitters  
Composting operations  
Existing kennels  
Commercial Accommodation Uses

##### Resource and Traditional Uses

Agricultural uses  
Forestry uses  
Fishery support uses  
Fish sheds and boat sheds  
Existing fishery support uses larger than 3,000 ft<sup>2</sup> (278.7 m<sup>2</sup>)  
Existing fishery uses  
Extractive facilities  
Hunting and fishing camps  
Traditional uses

##### Community Uses

Institutional uses  
Open space uses  
Recreation uses  
Private clubs and lodges

##### Other Uses

Cannabis production facilities