



**ANDY FILLMORE**

MAYOR | LE MAIRE | ME'R

902.490.4010 | mayor@halifax.ca | @andyfillmorehfx

December 2, 2025

Honourable John A. MacDonald  
Minister of Municipal Affairs  
Department of Municipal Affairs  
14th Floor North, Maritime Centre  
1505 Barrington Street  
P.O. Box 216  
Halifax, NS  
B3J 2M4

Dear Minister MacDonald,

Thank you for your letter from November 26, 2025. With the approval of the amendments to the Regional Centre SMPS and LUB, approved by Council on October 7, 2025, you have asked the Municipality to deliver a legal opinion to your office establishing the following:

- (a) All of the PIDs in the Dartmouth Cove Special Area lie entirely within the municipal boundaries of the Municipality;
- (b) The Municipality's authority to regulate infilling under s. 235(5)(g) of the HRM Charter includes the infilling of lands under water; and
- (c) Confirmation from Justice Canada that none of the measures set out in paragraphs 1-9 infringe on the jurisdiction of the Federal Government.

Without prejudice to any future decisions by Council regarding the legality of "amendments" of this nature or any other decision made under subsection 223(6), I attach the following legal opinion from Municipal Solicitor John Traves, KC, CD.

We trust that this satisfies your request and await your response in order to resolve any uncertainty with respect to the approved amendments.

Sincerely,



Andy Fillmore  
Mayor of Halifax

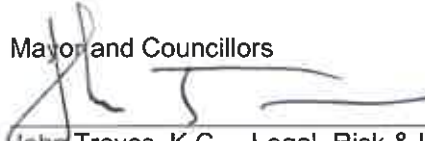
c.c. Halifax Regional Council  
Brad Anguish, A/CAO  
John Traves, KC, CD



# MEMORANDUM

TO: Mayor and Councillors

FROM:

  
John Traves, K.C. – Legal, Risk & Insurance

DATE: November 28, 2025

**SUBJECT: PLPROJ-2024-01075: Amendments to Regional Centre Secondary Municipal Planning Strategy and Regional Centre Land Use Bylaw to Restrict Water Lot Development Infilling in Dartmouth Cove - Approved by Halifax Regional Council October 7, 2025**

The Municipality has received notice dated November 26, 2025 from the Provincial Director of Planning that the above-noted amendments have been approved by Municipal Affairs with changes/amendments. These amendments effectively impose conditions with respect to the coming in to force of HRM's amendment package. Without prejudice to future decisions relating to the legality of this in light of subsection 223(6) of the *Charter* or otherwise, and without addressing the legality of the Minister's decision, Council has requested I draft an opinion responding to the Minister's request, establishing that:

- a) All of the PIDs in the Dartmouth Cove Special Area lie entirely within the municipal boundaries of the Municipality;
- b) The Municipality's authority to regulate infilling under s. 235(5)(g) of the *HRM Charter* includes the infilling of lands under water; and
- c) Confirmation with Justice Canada that none of the measures set out in paragraphs 1 to 14 infringe on the jurisdiction of the Federal Government.

**All of the PIDs in the Dartmouth Cove Special Area lie entirely within the municipal boundaries of the Municipality**

**Pre-Confederation Water Lots**

All of the PIDs in the Dartmouth Cove Special Area are what is commonly referred to as Pre-Confederation water lots. Pre-confederation water lots are lands below the high-water mark which were granted by the Province of NS to private interests/individuals prior to the transfer of ownership of all public harbours existing in 1867 to the federal government by virtue of *British North American Act, 1867* (the “BNA Act”). Federal ownership of the public harbours results in the un-granted portion of the harbours becoming areas of exclusive federal jurisdiction by virtue of being “Public Property” per s. 91 (1A) of the *Constitution Act, 1867* (as is all federally owned property within the province).

**Nova Scotia’s Territorial limits**

Section 70 of the *British North America Act* provides that “*the Provinces of Nova Scotia and New Brunswick shall have the same limits as at the passing of this [the BNA] Act.*” Nova Scotia’s claim to its territorial limits at Confederation include the seabed off the coast of Nova Scotia for a distance extending approximately 120 miles. This claim is based on the *Alexander Grant* of 1621 where James I granted Nova Scotia to Sir William Alexander. The grant not only included vast tracts of land but large areas of the territorial seabed as well. The *Alexander Grant* served as the basis for the delineation over time by commissions to Governors appointed by the British government which were shown to include ownership of the territorial seabed and Nova Scotia’s actions as a colony in enacting a variety of legislation dealing with its territorial seas including the rights to offshore resources and ownership of the seabed.

This inclusion within the territorial boundaries of Nova Scotia has been repeatedly asserted and affirmed by governors and legislatures. While ungranted portions of public harbours fell under federal jurisdiction at Confederation, this federal vesting would not have included water lots granted prior to Confederation, and such water lots remained private property within the territorial jurisdiction of Nova Scotia.

**Halifax Harbour as a Public Harbours**

There is no definitive survey of the Halifax Harbour boundaries at the time of Confederation (*Maxwell v R.* (1917), 17 Ex CR 97 at p. 101. Retrieved from: [JU1-2-1-17-eng.pdf \(publications.gc.ca\)](#)). However, I am not aware of any reasonable grounds to challenge the longstanding view that the Harbour includes all the waters lying northwest of the harbour limit line (running from a point near the Shearwater Yacht Club in Eastern Passage through McNab’s Island to a point on land just past Purcell’s Cove which would seem to reasonably constitute the headlands which waters includes the Bedford Basin, the Narrows and the Northwest Arm).

Likewise, I am also not aware of any debate that Halifax Harbour was a Public Harbour at the time of Confederation and remains so today per *Maxwell* (see also: La Forest, G.V. *The Meaning of "Public Harbours" in the Third Schedule to the British North America Act, 1867*, 1963 CanLII Docs 27. [III. Characteristics of a Public Harbour | The Meaning of "Public Harbours" in the Third Schedule to the British North America Act, 1867 | CanLII](#) ). As noted above, Nova Scotia's property in the ungranted portions of any Public Harbour was included (by virtue of Schedule Three) in the Property of the Province that was declared to be the Property of Canada at Confederation (s. 108.).

### **Location of the Dartmouth Cove Special Planning Area within HRM**

Nova Scotia has divided the lands of the Province (including Sable Island) into various Counties. The historic boundaries of Halifax County were originally established in 1759 as including "all lands and islands" which were not part of the other original counties. This boundary would have included internal waters like those of Dartmouth Cove under the common law doctrine of *inter fauces terrae* (see discussion in *Re Dominion Coal Co. Ltd. and County of Cape Breton*, 1963 CanLII 600 (NS CA)). This common law approach is not necessary however, as the Legislature explicitly included much of the Harbour, including Dartmouth Cove, within the boundaries of the former City of Dartmouth in the 1962 [Dartmouth City Charter](#). The lands of the former City of Dartmouth form part of the amalgamated Halifax Regional Municipality created by the Nova Scotia legislature in 1996.

The location of the Dartmouth Cove water lots within the boundaries of the Halifax Regional Municipality is also affirmed by the Provincial land registration scheme. Under the [Land Registration General Regulations](#), all counties in Nova Scotia have been designated as Land Registration Districts by the Governor in Council. Under these regulations, the Halifax Land Registration District's boundaries are those of Halifax County. Halifax Regional Municipality's boundaries are also those of Halifax County. Of the 9 PIDs located within the Dartmouth Cove Special Area, 6 are registered pursuant to the *Land Registration Act*. In each of those 6 cases, the Registrar General has processed registrations in the Halifax Land Registration District. As required by s.43 of the *LRA*, the Registrar General then caused a notice to be filed in the registry of deeds for the district "within which the parcel is situate", being the Halifax County Registry of Deeds.

For the reasons provided HRM takes the position that the PID's within the Dartmouth Cove Special Planning Area are within HRM, in the County of Halifax which is within the territory of the Province of Nova Scotia.

**The Municipality's authority to regulate infilling under s.235(5)(g) of the *HRM Charter* includes the infilling of lands under water**

**Planning Jurisdiction**

Section 92 of the *Constitution Act, 1867* vests Property and Civil Rights and Generally all Matters of a merely local or private Nature in the Province. In exercising this jurisdiction, all provinces have taken responsibility for land use planning and have largely delegated authority for land use planning to municipalities.

The Municipality derives its authority to regulate land use planning from the *HRM Charter*. Specifically, s 235(5)(g) allows:

235(5) Where a municipal planning strategy so provides, a land-use by-law may (g) in relation to a development, regulate or prohibit the altering of land levels, the excavation or filling in of land, the placement of fill or the removal of soil unless these matters are regulated by another enactment of the Province;

Development is defined as follows:

209(c) "development" includes the erection, construction, alteration, placement, location, replacement or relocation of, or addition to, a structure and a change or alteration in the use made of land or structures;

The Municipality's position is that a water lot is land partially or fully submerged under water. S. 235(1) allows the Municipality to apply zoning to all lands within the area covered by a land use by-law. S. 235(5)(g) allows for the regulation of filling in of land. The exception to this is water lots owned by either Canada (for the reasons discussed in section A above) or the Province of Nova Scotia (The Legislature has not seen fit to make the Province subject to the *HRM Charter*)

The Courts have recognized that land use planning can affect lands submerged by water. In *Hamilton Harbour Commissioners v Hamilton (City)* (1976), 21 OR (2d) 459, the City of Hamilton's land use by-law contained an "open water" zone. The Court acknowledged that this was within the Municipality's jurisdiction of land use control, and a by-law regulating lands (and water) that was not, in pith and substance, regulating navigation and shipping, was within a municipality's jurisdiction.

HRM currently regulates the infill of water lots in the Northwest Arm (amendments approved by Council on January 9, 2024, with Director of Planning determination amendments did not need Minister approval under s. 223(3) of the *Charter*). Likewise, HRM is not the only municipality in Nova Scotia to regulate land submerged under water with approval from the Province. (see more specifically, [the Municipality of Chester's Land Use By-law](#) ss 4.23.1(o) and 9.4.4(g))

**Confirmation with Justice Canada that none of the measures set out in paragraphs 1 to 14 infringe on the jurisdiction of the Federal Government**

Provincial delegation to municipalities over lands within their boundaries, including harbor borders, is valid delegation according to the Supreme Court of Canada in *British Columbia (Attorney General) v Lafarge Canada Inc*, [2007] 2 S.C.R. 86. While a case dealing with dry land/foreshore, the Court does not appear to distinguish between property located on dry land or under the surface of the harbour waters. The Court quotes *Hamilton Harbour Commissioners v Hamilton (City)* (1976), 21 OR (2d) 459 at 461 (Ont. HC):

"In my opinion, land-use control within a harbour has both provincial and federal aspects.... Only if conflict arises with respect to the use of a parcel of land within the limits of the harbour, will the paramountcy of the federal power cause the operation of the by-law of the City to be suspended."

The Court also quoted *Sturmer v Beaverton (Town)* (1911), 24 OLR 65 (Ont. Div. Ct):

"The harbour may be, as a harbour, "within the jurisdiction of the Parliament of Canada;" but is none the less, for purposes within the ambit of provincial legislation, within the jurisdiction of the Province and its Legislatures, provincial and municipal."

The Court further indicated that the authority of municipalities to control land in their boundaries is not invalid unless it conflicts with federal authority:

"On the provincial side, the power involved is the authority over municipal institutions and matters of local interest. The province of British Columbia has delegated broad powers to the City on zoning and construction within its boundaries. No one disputes the validity of this delegation of provincial powers. As a result, it is clear that both the Parliament of Canada and the legislature of British Columbia have validly exercised their legislative powers.

...

In my view, the municipal by-law is indeed valid legislation. In pith and substance, the by-law is concerned with zoning regulations and requirements surrounding land use for property situated within the municipality's boundaries (p.123)."

Traditionally, HRM in the absence of any indication of federal willingness to consider municipal regulation of lands within the National Harbour has purposely avoided any conflict electing in the to regulate land use only after water lots have been infilled. This approach failed to deter infilling and became a source of frustration for residents and Council.

In January of 2022 at the request of Mayor Filmore (then the local Member of Parliament for Halifax) legal counsel for Transport and Infrastructure Services reached out HRM indicating a willingness to engage with HRM regarding HRM's jurisdiction on planning matters within the territorial jurisdiction (which includes the Harbour) and how this could be potentially accommodated through planning documents.

Attached to support this position are letters from the Minister of Transport Canada and the Deputy Minister of Transport documenting their willingness to work with the Municipality, and that they see no jurisdictional issue with the Municipality's right to enact land use by-laws over the parts of the harbour within its territorial boundaries.

In light of these letters HRM drafted planning documents preventing infilling with a view to avoiding any issues related to Federal Paramountcy or intruding into areas of sole federal jurisdiction such as Navigation. The draft regulations related to the Northwest Arm (Dartmouth Cove planning documents are identical with one additional exception related to uses incidental to navigation) were provided to Justice Canada in August of 2023 for review and comment before being given first reading. Transport Canada agreed to amend its approval documentation for permits to specifically reference municipal land use by-laws. Attached is the cover letter for the Minister of Transport's permit for a property located in the Dartmouth Cove Special Area, stating that any work must comply with Municipal land use by-laws.

While I acknowledge that every exercise of land use planning within Halifax National Harbour must be considered on a case-by-case basis, the Dartmouth Cove by-laws were drafted as a mirror to those accepted by the Province in 2024 in relation to the Northwest Arm and can advise that HRM is aware of not concerns being raised by Transport Canada in relation to any impact on Navigation either before or after their coming into effect.

## **Conclusion**

While the Municipality sees the potential for challenge regarding the validity of the amendments this is not uncommon, and the risk should not be minimised. However, it is my opinion that the Dartmouth Cove Special Area amendments do not, in pith and substance, infringe upon the federal government's right to regulate navigation and shipping in the circumstances.



**From:** Minister of Transport / Ministre des Transports (TC) <[TC.MinisterofTransport-MinistredesTransports.TC@tc.gc.ca](mailto:TC.MinisterofTransport-MinistredesTransports.TC@tc.gc.ca)>

**Sent:** Monday, April 3, 2023 11:31 AM

**To:** Power, Gerald William <[Gerald.W.Power@halifax.ca](mailto:Gerald.W.Power@halifax.ca)>

**Subject:** [External Email] Infilling on the Northwest Arm of Halifax Harbour

*[This email has been received from an external person or system]*

April 3, 2023

Cathie O'Toole  
Chief Administrative Officer  
Halifax Regional Municipality

c/o Gerald Power  
CAO Reports & Executive Assistant  
[Gerald.W.Power@halifax.ca](mailto:Gerald.W.Power@halifax.ca)

Dear Cathie:

I am writing regarding correspondence from your predecessor, Jacques Dubé, concerning infilling on the Northwest Arm of Halifax Harbour. I apologize for the delay in replying.

Transport Canada continues to fulfill its responsibility by reviewing the proposed works. As part of the *Canadian Navigable Waters Act* (CNWA) regulatory approval process, each proposed work has a 30-day comment period that is open to anyone (including organizations, associations, government, etc.). The Navigation Protection Program Officer then considers all comments pertaining to navigation as part of the regulatory review.

Regarding the Northwest Arm infilling application, Transport Canada has also met with concerned groups as part of a facilitated discussion hosted by the Impact Assessment Agency of Canada in response to a request for a regional assessment. To demonstrate the department's openness to hear from its stakeholders, on two occasions, officials have also met with John Traves, Director of Legal Services and Chief Solicitor for the Halifax Regional Municipality, to hear the municipality's concerns and feedback about infilling in and around the Northwest Arm. However, while Transport Canada considered the various views, it is important to underscore that the department can only render decisions related to impacts on navigation, and that other considerations or concerns exceed its authorities. In this regard, there is also an opportunity for the municipality and its provincial counterparts to examine what gaps exist in regulating such issues beyond navigation and how best to address them within municipal and provincial authorities. Should the municipality decide to pursue regulation of infilling beyond matters related to navigation, the municipality can expect full cooperation from Transport Canada in any effort to avoid jurisdictional concerns.

Finally, Transport Canada will be undertaking a CNWA legislative review in 2023. Given the municipality's request to have a greater role regarding infilling applications, the municipality may wish to participate in this review. The department will inform you when the review begins.

Sincerely,



A handwritten signature in black ink, appearing to read 'Omar Alhabra', with a stylized, flowing script.

The Honourable Omar Alhabra, P.C., M.P.  
Minister of Transport

**From:** Minister of Transport / Ministre des Transports (TC) <[TC.MinisterofTransport-MinistredesTransports.TC@tc.gc.ca](mailto:TC.MinisterofTransport-MinistredesTransports.TC@tc.gc.ca)>

**Sent:** Friday, September 22, 2023 4:02 PM

**To:** O'Toole, Cathie <[Cathie.OToole@Halifax.ca](mailto:Cathie.OToole@Halifax.ca)>

**Subject:** [External Email] Regarding infilling in the Northwest Arm of Halifax Harbour

*[This email has been received from an external person or system]*

September 22, 2023

Cathie O'Toole  
Chief Administrative Officer  
Halifax Regional Municipality  
[cathie.otoole@halifax.ca](mailto:cathie.otoole@halifax.ca)

Good day:

Thank you for your letter to my predecessor regarding infilling in the Northwest Arm of Halifax Harbour and Halifax Regional Municipality's (HRM's) role in infilling projects. I apologize for the delay in replying. Transport Canada acknowledges and supports HRM's desire for jurisdictional boundaries to be respected in drafting municipal regulations for infilling on the Northwest Arm. Generally, as long as the pith and substance of a municipality's regulations do not fall within federal jurisdiction over navigation and shipping, such as prohibiting navigation in the Northwest Arm, there should be limited opportunity for jurisdictional concerns.

If required, the department's Navigation Protection Program Regional Manager for the Atlantic Region, Carl Ripley, remains available to have further meetings with you to discuss our mandate under the *Canadian Navigable Waters Act* and outline our jurisdiction. Carl can be reached at [carl.ripley@tc.gc.ca](mailto:carl.ripley@tc.gc.ca) or 506-866-8059. We are committed to providing our full cooperation in this matter; however, we will not be able to provide advice on matters outside of our jurisdiction and expertise. I trust these discussions will assist you in drafting municipal regulations.

Transport Canada greatly values HRM's collaborative spirit and its commitment to promoting sustainable practices that ensure the continued accessibility and enjoyment of Canada's navigable waters.

Thank you for reaching out.

Sincerely,

A handwritten signature in black ink, appearing to be 'Pablo Rodriguez', with a stylized, overlapping loop structure.

The Honourable Pablo Rodriguez, P.C., M.P.  
Minister of Transport and Quebec Lieutenant



**Transport  
Canada**

Assistant Deputy Minister  
Programs

Place de Ville  
Ottawa ON K1A 0N5

**Transports  
Canada**

Sous-ministre adjoint  
Programmes

**Attachment L - Letter from Transport  
Canada to the Mayor of Halifax Regional  
Municipality - Sept 9, 2025**

September 9, 2025

His Worship Andy Fillmore  
Mayor  
Halifax Regional Municipality  
[mayor@halifax.ca](mailto:mayor@halifax.ca)

Dear Mayor Fillmore and Members of Halifax Regional Council:

This is further to the Halifax Regional Municipality (HRM) staff report concerning the Dartmouth Cove water lots that will be considered at the Halifax Regional Council on September 9, 2025. This report, states that “Amendments prohibiting most infilling activities of water lots require the Federal Government’s support.”

Consistent with written correspondence dated September 22, 2023, and March 4, 2024, and as communicated at meetings, including one chaired by HRM on April 22, 2024, Transport Canada’s responsibility as set out in the *Canadian Navigable Waters Act* (CNWA) is to ensure navigable waters remain open for transport and recreation.

In fulfilling this responsibility, it considers applications for approvals of works under the CNWA. As typically indicated in Transport Canada’s approval letters under the CNWA, it is a proponent’s responsibility to comply with any other applicable laws and regulations, including those of municipalities.

Any HRM decision to restrict infilling by way of bylaws is within its own authority, provided that the pith and substance of the Municipality’s bylaws do not fall within federal jurisdiction, including navigation and shipping, or apply to federal lands.

I trust this information is helpful. Transport Canada is available to answer any question you may have.

Yours sincerely,

Stephanie Hébert  
Assistant Deputy Minister, Programs



Navigation Protection Program (NPP)  
6th Floor-95 Foundry St  
Moncton NB  
E1C 5H7  
Canada

Your file:  
Our file: 2022-206446

Registry number: 5269

April 8, 2024

Bruce Wood  
4197847 Nova Scotia Limited  
PO Box 89  
Eastern Passage, Nova Scotia B3G 1M7

**Attention: Bruce Wood**

**RE:** Approval under the *Canadian Navigable Waters Act (CNWA)*, for the placement of the following work below located in Dartmouth Cove, approximately at 44° 39' 51.01" N, 63° 33' 29.01" W, The Project Area (i.e., the potential area that is proposed to be infilled) comprises a private water lot (PID #00114132) that occupies approximately 2.7 hectares (ha), Halifax Regional Municipality, in the Province of Nova Scotia.

**Approved work(s):**

- Fill

Please find enclosed an approval for the above-noted work issued by the Minister of Transport under subsection 7(6) of the CNWA. This approval replaces any previous approvals that have been issued in relation to this work (if any) and will be the sole approval for this work until such time as a new approval is issued for any future changes.

In order to issue this approval, the Minister has considered each of the factors listed in subsection 7(7) of the Act, additional information provided by you (if applicable) and any adverse effects that the decision to approve the work may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Please note that the CNWA, amongst other obligations, requires the owner to immediately notify the Minister if the work causes or is likely to cause serious and imminent danger to navigation, to take reasonable measures to mitigate potential dangers and to remedy any adverse effects that result from that danger to navigation.

This approval relates only to the proposed works detailed in the drawings and plans appended to the enclosed approval document and the interference of your work with navigation under the CNWA. The approval does not grant any rights related to the ownership of the bed of the navigable water.

The proponent is expected to implement the recommendations related to the Archaeological Mitigation and Monitoring Plan, as documented in the letter, from Davis MacIntyre and Associates, addressed to Atlantic Road Construction & Paving on February 13, 2024.

Please note that it is the owner's responsibility to comply with any other applicable laws and regulations including any related Halifax Regional Municipality land-use or zoning bylaws in effect.

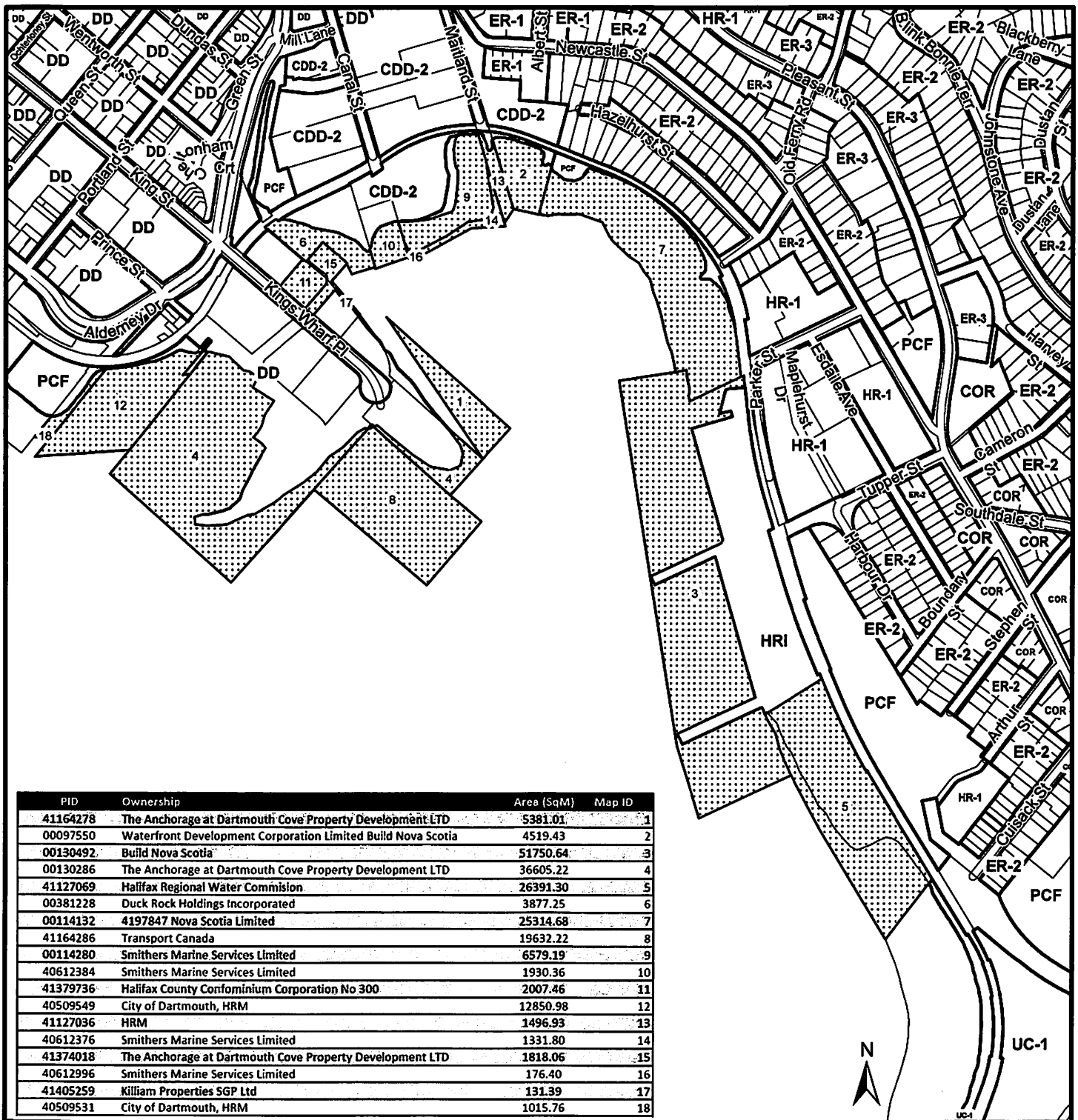
Please contact our office in Atlantic for any questions, by phone at 506-851-3113 or by e-mail at [NPPATL-PPNATL@tc.gc.ca](mailto:NPPATL-PPNATL@tc.gc.ca).

Respectfully,

Carl Ripley  
Regional Manager, NPP Atlantic  
Programs Group  
Transport Canada  
Atlantic Region

Attachment(s): Canadian Navigable Waters Act approval

cc: Mike Shannon



PID	Ownership	Area (SqM)	Map ID
41164278	The Anchorage at Dartmouth Cove Property Development LTD	5381.01	1
00097550	Waterfront Development Corporation Limited Build Nova Scotia	4519.43	2
00130492	Build Nova Scotia	51750.64	3
00130286	The Anchorage at Dartmouth Cove Property Development LTD	36605.22	4
41127069	Halifax Regional Water Commission	26391.30	5
00381228	Duck Rock Holdings Incorporated	3877.25	6
00114132	4197847 Nova Scotia Limited	25314.68	7
41164286	Transport Canada	19632.22	8
00114280	Smithers Marine Services Limited	6579.19	9
40612384	Smithers Marine Services Limited	1930.36	10
41379736	Halifax County Condominium Corporation No 300	2007.46	11
40509549	City of Dartmouth, HRM	12850.98	12
41127036	HRM	1496.93	13
40612376	Smithers Marine Services Limited	1331.80	14
41374018	The Anchorage at Dartmouth Cove Property Development LTD	1818.06	15
40612996	Smithers Marine Services Limited	176.40	16
41405259	Killiam Properties SGP Ltd	131.39	17
40509531	City of Dartmouth, HRM	1015.76	18

## Map 2 - Zoning and Ownership

Dartmouth Cove Water Lots,  
Dartmouth

 Water Lots

Regional Centre  
Land Use By-Law

### Zone

CDD-2	Comprehensive Development District 2
COR	Corridor
DD	Downtown Dartmouth
ER-1	Established Residential 1
ER-2	Established Residential 2
ER-3	Established Residential 3
HR-1	Higher-Order Residential 1
HRI	Harbour-Related Industrial
PCF	Parks and Community Facilities
UC-1	University and College 1

**HALIFAX**

0 50 100 150 200 Meters

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.