

DECLASSIFIED

**HALIFAX**

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FOIPOP Review

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Date

Dec 17, 2019 U

Item No. 16.2.1

Halifax Regional Council

March 8, 2016

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In Camera (In Private)

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by

SUBMITTED BY:

John Traves, Q.C. Acting Chief Administrative Officer

Original Signed by

Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: February 16, 2016

SUBJECT: Legal Advice - Boundaries for the Blue Mountain Birch Cove (BMBC) Regional Park - Negotiation

PRIVATE & CONFIDENTIAL

ORIGIN

September 17, 2013, Regional Council, Item 11.1.5

MOVED by Deputy Mayor Rankin, seconded by Councillor Walker that Halifax Regional Council:

1. Accept the Terms of Reference (Attachment 1 of the July 8, 2013, staff report) for an independent facilitator to help HRM and the developers' representatives reach a negotiated agreement on potential regional park boundaries, parkland acquisition and development of the Highway 102 West Corridor lands;
2. Authorize staff to enter into discussions with the developers' representatives for the purposes of securing the services of an Independent Facilitator as per the terms of the July 8, 2013, staff report;
3. Until such time as the facilitator has provided the Municipality with his or her report or unless the information has already been disclosed under freedom of information, any confidential information arising from the facilitation process shall be discussed by Council at a closed session; and
4. Ensure there is public consultation as per article 5 (Attachment 1 of the July 8, 2013, staff report) prior to Regional council making a decision on the potential negotiated agreement.

October 28, 2014, Regional Council, Item 13.2.3

MOVED by Councillor Rankin, seconded by Councillor Walker that Halifax Regional Council:

1. Direct staff to proceed with the facilitation process;

RECOMMENDATION ON PAGE 2

2. Direct staff to proceed with their scheduled November meeting with the parties involved in accordance with the Terms of Reference approved by Council as its meeting of September 17, 2013; and
3. Further, should an agreement be reached, that staff be instructed to obtain an appraisal report done on the lands based on the determined boundaries before returning to Council with a report and recommendation.

### **LEGISLATIVE AUTHORITY**

*HRM Charter:* Sections 19(a), (f) and (g) (In Camera to discuss acquisition of municipal property, potential litigation and legal advice eligible for solicitor-client privilege), 235 (Content of a Land Use By-Law) and 237 (Future Public Use).

### **RECOMMENDATION**

It is recommended that:

1. Halifax Regional Council instruct staff to assist in the completion of the facilitator's report and proceed to the public consultation, as per article 5 of the Terms of Reference (Attachment 1 of the July 8, 2013, staff report), on both HRM Map 3A and the Annapolis Map dated July 27, 2015; and
2. This report not be released to the public.

### **BACKGROUND**

The Blue Mountain Birch Cove lands were identified in the 2006 Regional Plan as a potential regional park. This was continued in the 2014 Regional Plan. A concept plan of the proposed boundaries was presented on Map 13 of the 2006 Regional Plan and Map 11 of the 2014 Regional Plan (See Attachment 1). The Province of Nova Scotia owns the majority of the public lands. The private lands within Map 11 are owned by the Annapolis Group Inc. and Susie Lake Development (Gateway Materials Limited, and B.D. Stevens Limited), after consolidation with the other owners of the private lands.

The lands fall under both the Urban Settlement and Urban Reserve Designations under HRM's Regional Plan. The majority of Susie Lake Development's and a portion of the Annapolis Group's holdings are within the Urban Settlement designation. The large balance of Annapolis Group's lands are designated Urban Reserve.

On September 25, 2007, Birchdale Projects Inc. on behalf of itself and the other property owners, including Annapolis and Susie Lake Developments, requested initiation of the secondary planning process. CBCL undertook a cost of servicing study for the lands, which was completed on February 3, 2009. In July, 2009, the property owners submitted a detailed request to Regional Council to initiate a secondary planning strategy for their lands. With respect to the BMBC Regional Park, the property owners indicated a willingness to consider the sale of lands to HRM and/or the dedication of specific parkland combined with other development rights through the secondary planning process.

On November 16, 2010, Regional Council directed staff to:

1. Undertake a Watershed Study for the Highway 102 West Corridor lands and await completion of Halifax Water's Wastewater Functional Plan;
2. Negotiate boundaries for the Blue Mountain – Birch Cove Lakes Regional Park, in relation to the Highway 102 West Corridor lands, through a facilitated process with an independent facilitator; and further, to bring the details of the proposed negotiating process back to Regional Council prior to entering into negotiations; and
3. Defer the review of criteria under Policy S-3 of the Regional Plan, to determine whether to initiate a Secondary Planning Process for the Highway 102 West Corridor lands.

On June 25, 2013 (item 11.1.7), the results of the Birch Cove Watershed Study were presented to Regional Council and were accepted.

On September 17, 2013, Regional Council directed staff as follows:

1. Accept the Terms of Reference for an independent facilitator to help HRM and the developers' representatives reach a negotiated agreement on potential regional park boundaries, parkland acquisition and development of the Highway 102 West Corridor lands;
2. Authorize staff to enter into discussions with the developers' representatives for the purposes of securing the services of an Independent Facilitator as per the terms of the July 8, 2013, staff report;
3. Until such time as the facilitator has provided the Municipality with his or her report, or unless the information has already been disclosed under freedom of information, any confidential information arising from the facilitation process shall be discussed by Council at a closed session; and
4. Ensure there is public consultation as per article 5 (Attachment 1 in the July 8, 2013, staff report) prior to Regional Council making a decision on the potential negotiated agreement.

Under the terms of reference the role of the independent facilitator is to:

- Work with HRM and the property owners to determine how they wish to engage with each other; including the sharing of confidential information with the Independent Facilitator and non-confidential information between the parties;
- Obtain parkland concepts from HRM and development plans from the property owners, and advise these parties on areas of common agreement;
- Assist with coming to common terms between HRM and the property owners on parkland boundaries and financial terms, and conditions for parkland designation that are acceptable to the parties;
- Prepare an Independent Facilitators Report that identifies areas of common agreement on parkland boundaries and (if necessary) areas of disagreement.

The Honourable Justice Heather Robertson was chosen by the parties to be the independent facilitator and agreed to the appointment in March, 2014. Draft parkland concepts were provided to Annapolis Group and Susie Lake Developments and Conceptual Land Use Plans were subsequently received from the property owners, along with appraisal reports.

HRM staff and representatives of Annapolis Group and Susie Lake Developments, including their legal counsel Rob Grant, attended facilitation with Justice Robertson on the following dates: November 25 and 26, 2014, February 18, 2015, June 23, 2015, August 5, 2015 and October 1, 2015. In addition, there were several meetings between HRM staff and the property owners, separate and apart from the facilitation meetings.

A number of key issues were raised and discussed at the facilitation and other meetings between the parties. These included:

- 1) Lands are currently zoned Urban Settlement and Urban Reserve;
- 2) Both developers were clear that any agreements on the boundaries were subject to secondary planning approval. Both developers believed this is necessary not only for economic reasons but also to ensure the park boundaries and development are efficient, workable and advance public and private objectives;
- 3) HRM was clear that staff could not guarantee secondary planning approval at this time and further, would not be recommending it;
- 4) Roads and other infrastructures are necessary to develop not only the developer's lands but also to open up access to regional park and wilderness park;
- 5) To plan for the development of the urban service areas, it is necessary to know the nature of the development of the urban reserve areas, as all access and services will go through urban service areas;
- 6) The requirement for both front country and back country lands within the Regional Park;
- 7) Protection of Fox Lake and the buffer zone for all waterfront land;
- 8) Protection of the islands and their value to both the park and the developers;
- 9) Costs for development from both developers' perspective;
- 10) Different approaches to the valuation of the land;
- 11) What can be achieved through the 10% parkland dedication;
- 12) Need to balance park ambitions with what is affordable; and
- 13) Consider Regional Park in the context of being adjacent to a provincial wilderness park.

A number of documents were provided and exchanged between the parties. These included various Conceptual Land Use Plans (which included proposed park boundaries) from both Annapolis Group and Susie Lake Developments, an appraisal report from Annapolis of their land, appraisal reports prepared on behalf of HRM for both Annapolis Group's and Susie Lake Development's lands, and maps setting out various regional park boundaries prepared by HRM Park staff.

HRM Park staff developed regional park criteria to assess the various plans put forward by both HRM and the property owners. The criteria were based on the purpose and objectives of a regional park under the 2006 and 2014 Regional Plans. These criteria, however, did not always correlate with the planning objectives of the property owners.

Following the facilitation meetings, other meetings between the parties, and several draft boundary plans, HRM park staff developed Map 3A as an alternate park boundary from Map 11 of the 2014 Regional Plan (Attachment 2). Annapolis Group also proposed several alternate park boundaries, with their final submission being a map provided on July 27, 2015 (now the map of December 10, 2015) (Attachment 3). Unfortunately, HRM staff and Annapolis Group were not able to reach a negotiated agreement on the BMBC Regional Park boundaries.

A tentative agreement has been reached between park staff and Susie Lake Developments with respect to park land within their property, should Regional Council decide to initiate a secondary planning strategy for their land. Approximately 15 acres of Susie Lake's land falls within the Regional Park Boundary set out in HRM Map 3A.

Annapolis Group and HRM are also unable to agree on the value of the land required under either of the proposed regional park boundary maps. The disagreement on value arises out of different methodology applied by the parties' respective appraisers. Annapolis Group provided infrastructure costing reports and a market appraisal report completed by Turner Drake & Partners, for the Annapolis' Groups entire land holdings within the Regional Park Boundary as found at Map 11 of the 2014 Regional Plan. The market value was \$78,000,000, which is \$80,000 per acre, in addition to a lost profit claim of \$41,300,000 (total of \$119,300,000). HRM retained Altus to prepare an appraisal of both the Annapolis Group's lands and Susie Lake lands. Altus concluded that the market value of all of Annapolis' land is \$12,700,000, and the market value of the Susie Lake Developments lands is [REDACTED]



Both Susie Lakes Developments and Annapolis have indicated that they will not agree to any proposed park boundary for BMBC Regional Park without Halifax Regional Council granting their request to initiate secondary planning strategies for their lands. Council passed a motion on November 16, 2010 to defer the review of criteria under Policy S-3 of the 2006 Regional Plan, to determine whether to initiate a secondary planning process for the Highway 102 West Corridor Lands. Once this facilitation process is complete, and the final report of the facilitator has proceeded to public consultation and has been presented to Council, Council will have to reconsider whether to initiate a secondary planning process for these lands.

Annapolis Group and Susie Lake Developments are not the only private property owners with land within the conceptual park boundary in Map 11 of the 2014 Regional Plan. The approximate area of private land within the conceptual park boundary, not including Annapolis Group and Susie Lake Developments, is 1,700 acres. Any decision Council makes with respect to the lands of Annapolis Group and Susie Lake Developments will have an impact on HRM's acquisition of any other private lands for the Blue Mountain Birch Cove Regional Park.

Attachment 4 is the Interim Facilitator's Report. It has been provided to give Regional Council a summary of all the relevant documents, history of the lands in question and the facilitation meetings. It was prepared by HRM staff and Mr. Grant and his clients, with Justice Robertson having the final approval over its content. Justice Robertson has penned a covering letter to Council, setting out some of the impediments to the parties reaching an agreement on the park boundary. HRM staff respectfully disagrees with some of the comments and conclusions in the cover letter.

As noted, the appraised value of the lands has been an issue in dispute between the parties. HRM staff does not view the landowners' appraised value of the lands as reasonable consideration. Further, staff does not agree that the fair market value/sub-division approach taken by Turner Drake to value the lands can reasonably be supported, in light of the lands current designations of Urban Settlement and Urban Reserve under the Regional Plan.

HRM staff has been described as being constrained in developing a vision of how the park may become a reality. Staff does not view themselves as constrained, but rather as guided by existing land use planning policy, park objectives, legislative mandates and fiscal constraints that are unique to a municipal government environment.

With respect to the characterization of HRM's Map 3A as a "retrenchment" of HRM's position, it must be noted that staff in developing Map 3A staff have moved away considerably from the original concept of the regional park in Map 13 of the 2006 Regional Plan. Further, staff have had a difficult task in trying to develop a park boundary that will allow for development while at the same time still satisfy the vision of the park in the Regional Plan.

### DISCUSSION

At the last facilitation meeting on October 1, 2015, it was clear that although progress had been made the parties were unable to reach an agreement with respect to proposed Regional Park boundaries. It is noted that prior motions of Council anticipated that the parties would be able to reach an agreement before proceeding to the public consultation. Justice Robertson, HRM staff and the representatives of the landowners all agreed that it would be helpful to obtain some direction from Regional Council at this stage. The question is whether the Facilitator's Report, which will form the basis of the public consultation, should include both HRM Map 3A and the Annapolis Group plan of July 27, 2015 (now the map of December 10, 2015), or should it proceed on just the Annapolis map.

It is staff's recommendation that both HRM Map 3A and the Annapolis Group's plan of July 27, 2015 (now the map of December 10, 2015) be included in the Facilitator's Report and be part of the public consultation. Both documents represent a compromise made by each party from their respective original plans. From a park planning perspective, HRM Map 3A is preferable. Further discussion on this is contained in Attachment 4. Following the public consultation, this matter must return to Regional Council for a final decision, at which time Council can choose to accept one or the other map, or possibly neither.

Acquiring the land required for HRM Map 3A will be more costly to the Municipality than acquiring the land set out in the Annapolis Group's plan of July 27, 2015 (now the map of December 10, 2015). Annapolis has advised that it would attribute a value of \$6 million to the parkland set out in its December 10, 2015 map that is over and above the 10% park dedication required. In addition, HRM would be responsible for constructing the roads through the parkland or sharing the cost of portions of the road with parkland frontage. The \$6 million is based on Turner Drake's appraisal of the land. Based on the Altus appraisal, this parkland would be valued at approximately \$2.8 million. Annapolis has recently indicated that it would be agreeable to proceeding to binding arbitration with respect to the value of the parkland in the December 10, 2015 map.

It is Annapolis Group's position that if HRM requires any additional land as set out in HRM Map 3A, it will no longer be economically feasible for it to develop the remainder of its land. [REDACTED]

Because there is no agreement on the Park boundary, Staff are recommending that both maps go forward to public consultation. This ensures both sides have their respective plans put forward to the public, subject only to Regional Council's right to withdraw HRM's Map 3A.

### FINANCIAL IMPLICATIONS

The financial implications of acquiring the lands for parkland development are indicated in the Discussion section of this report.

### COMMUNITY ENGAGEMENT

The terms of reference for the facilitated process ensures there is public consultation prior to Regional Council making a decision on the Regional Park boundaries. If Regional Council directs staff to initiate a

Secondary Planning Process, the normal public consultation process shall be followed for those lands within the Urban Settlement Designation.

### **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications associated with moving forward with this report.

### **ALTERNATIVES**

In the alternative, Regional Council could instruct staff to take only the Annapolis map of July 27, 2015 (now the map of December 10, 2015) to public consultation. This would be then become the negotiated agreement on potential Regional Park boundaries, as referenced in the Terms of Reference approved by Council on September 17, 2013, and the fourth Motion of Council of the same date. If Council recommends taking just the Annapolis Group's plan of July 27, 2015 to the public consultation, it may still ultimately reject the proposed park boundary in its final determination on this matter. However, that may undermine the process that has been carried out to date. Further, proceeding this way would not give Council an opportunity to get feedback from the public on the two different park boundaries. As such, this option is not recommended.

### **ATTACHMENTS**

- Attachment 1 – Map 11 from the 2014 Regional Plan
- Attachment 2 – HRM Map 3A
- Attachment 3 – Annapolis Group's map of July 27, 2015 (now the map of December 10, 2015)
- Attachment 4 – Interim Facilitator's Report

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If the report is released to the public, a copy can be obtained by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

Report Prepared by: Karen E. MacDonald, Senior Solicitor, 902.490.3570

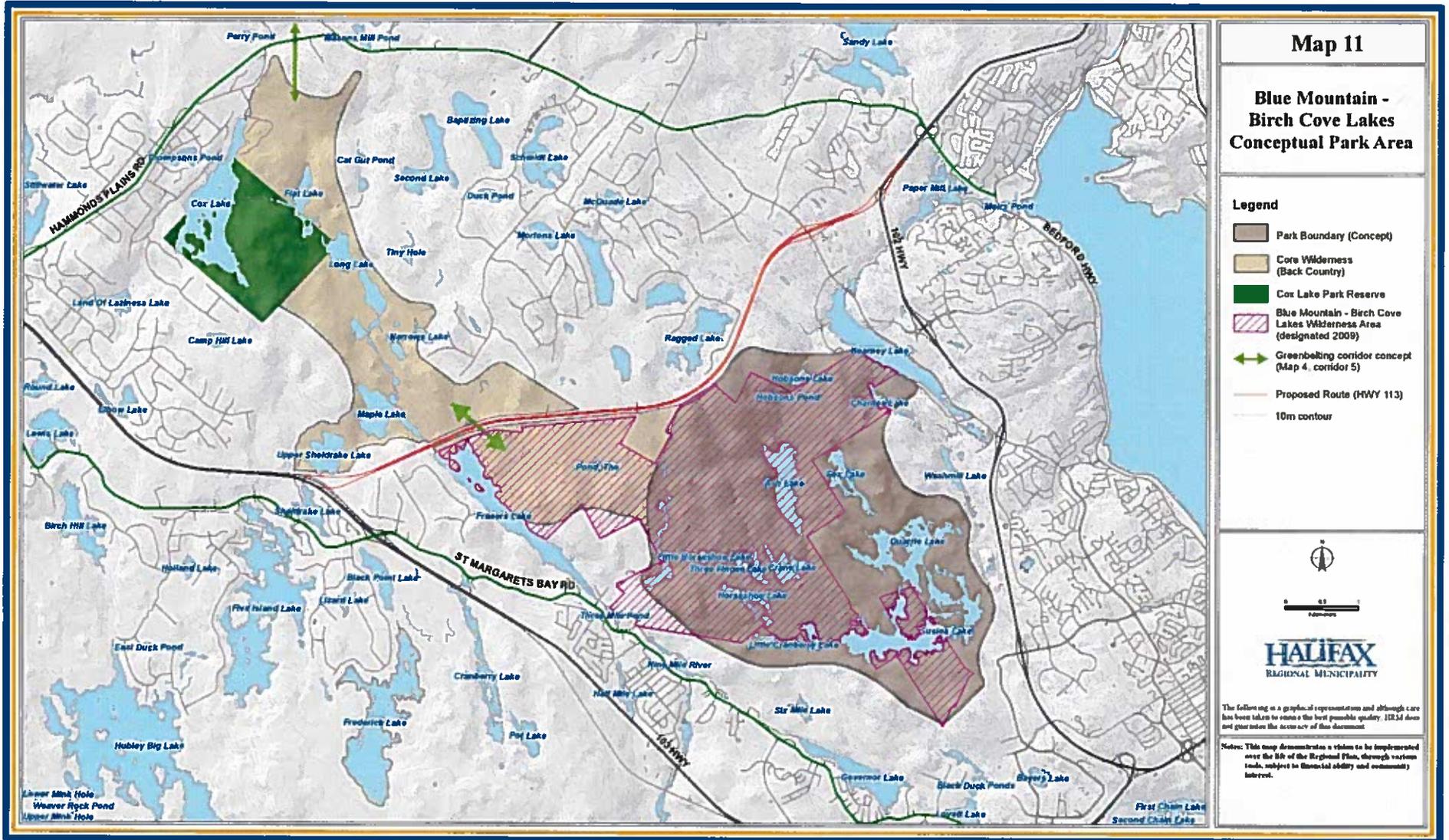
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**Map 11**

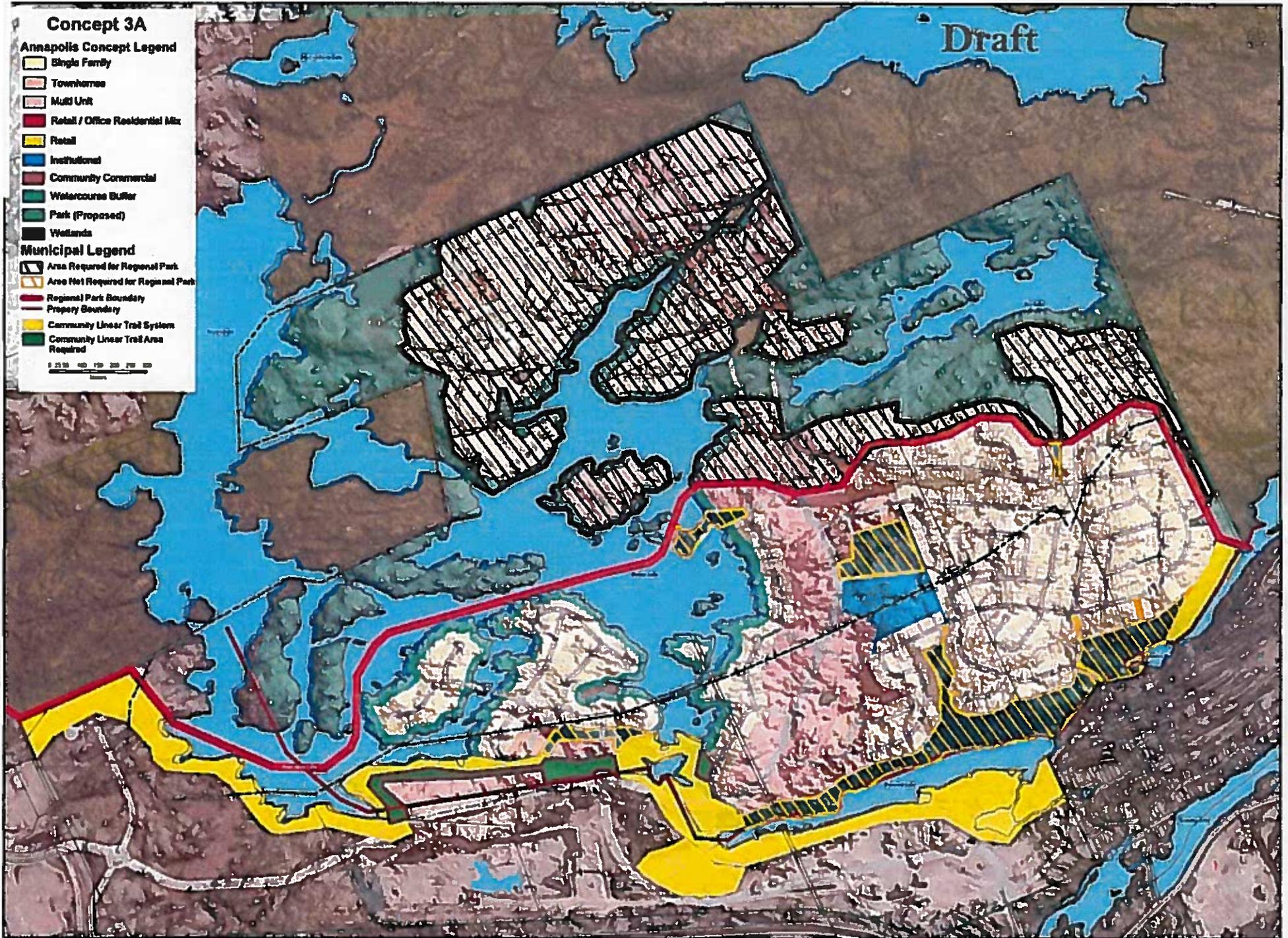
**Blue Mountain - Birch Cove Lakes Conceptual Park Area**

- Legend**
- Park Boundary (Concept)
  - Core Wilderness (Back Country)
  - Cox Lake Park Reserve
  - Blue Mountain - Birch Cove Lakes Wilderness Area (designated 2009)
  - Greenbelting corridor concept (Map 4, corridor 5)
  - Proposed Route (HWY 113)
  - 10m contour

  
  
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The following is a graphical representation and although care has been taken to ensure the best possible quality, HRM does not guarantee the accuracy of this document.

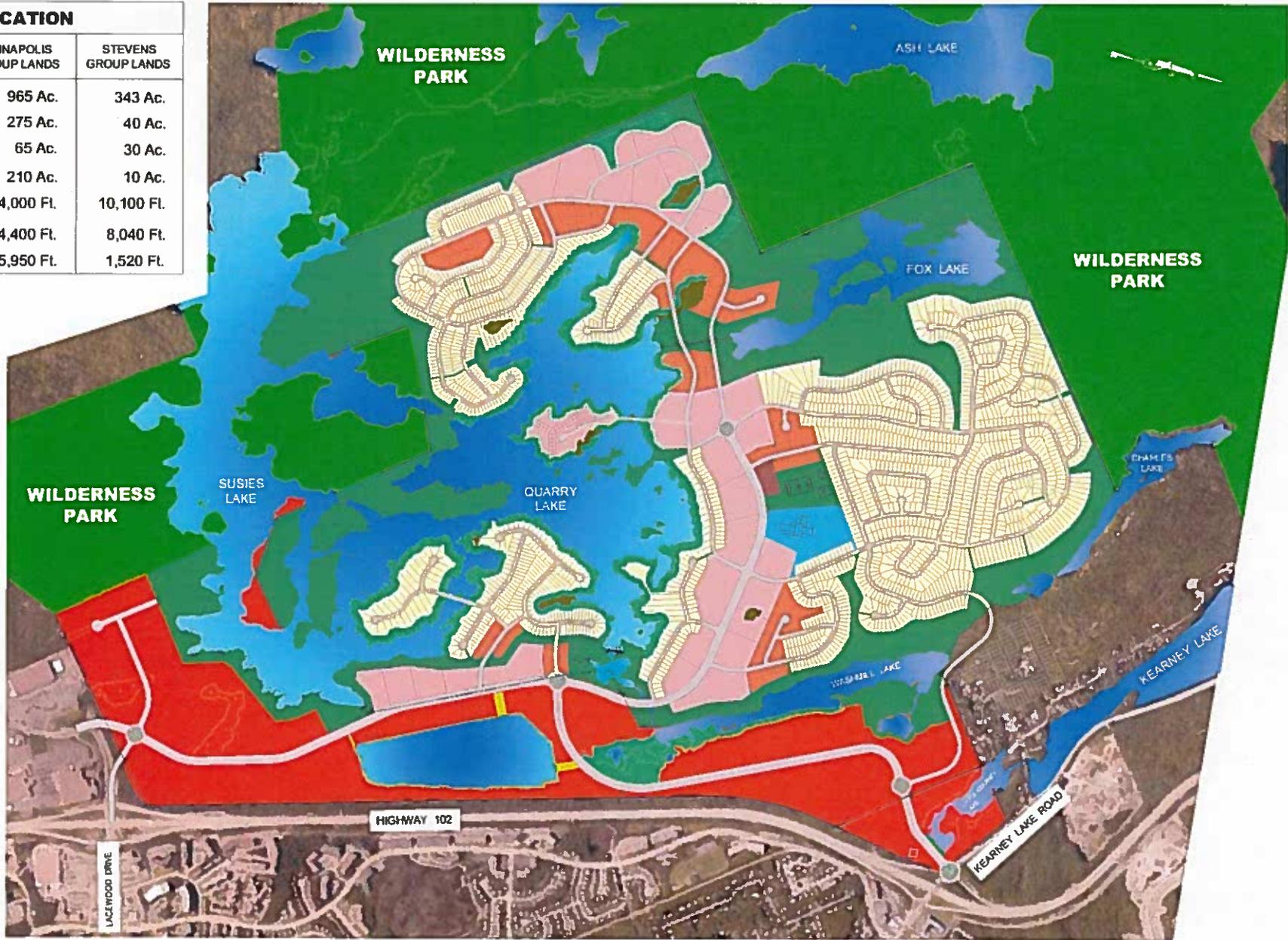
**Note:** This map demonstrates a vision to be implemented over the life of the Regional Plan, through various tools, subject to financial ability and community interest.



**PARK DEDICATION**

|                      | ANNAPOLIS GROUP LANDS | STEVENS GROUP LANDS |
|----------------------|-----------------------|---------------------|
| TOTAL LAND           | 965 Ac.               | 343 Ac.             |
| TOTAL PARK           | 275 Ac.               | 40 Ac.              |
| REQUIRED PARK        | 65 Ac.                | 30 Ac.              |
| SURPLUS PARK         | 210 Ac.               | 10 Ac.              |
| PUBLIC SHORELINE     | 54,000 FL.            | 10,100 FL.          |
| PRIVATE SHORELINE    | 34,400 FL.            | 8,040 FL.           |
| PARK STREET FRONTAGE | 5,950 FL.             | 1,520 FL.           |

- Single Family
- Townhomes
- Multi Unit
- Institutional
- Community Commercial
- Riparian Buffer
- Park
- Wetlands
- Mixed Use
- Wilderness Park



February 12, 2016

Your Worship Mayor Savage and Members of Council,

I am pleased to provide you with an Interim Facilitator's Report of the Negotiation of the Boundaries for the Blue Mountain/Birch Cove Lakes Regional Park, which I attach.

I viewed this facilitation as an exciting opportunity to assist HRM in establishing this Regional Park unique in character, providing an urban park experience and front country entry to a remarkable designated wilderness area of 3242 acres, the combined park area almost the size of peninsular Halifax, in the very midst of HRM, an uncommon opportunity to most Canadian cities.

Mr. Robert Grant acting for the Annapolis Group and Susie Lake Developments, the Stevens Group, has been able to present the vision of the Landowners who are united in their common quest;

- To be able to develop their lands contiguous to the proposed park, on the west side of Highway 102 corridor, after proceeding through the required secondary planning process and MPS amendment.
- To share as between these companies, the cost of the essential sewer, water and road infrastructure needed to the development the lands in an economically feasible manner.
- To help the HRM realize the creation of the Regional Park and the early use of the park by its citizens in deeding very significant acres of raw park land to HRM for reasonable consideration (monetary or land swaps) or designation of parkland for future acquisition and also building at the Landowners' expense, park infrastructure, such as public parking, ramps, boat launch areas, and dedicated recreational venues as development occurs, so that the citizens of HRM will more immediately enjoy this urban access to the greater regional park as development occurs on the eastern side of Susie and Quarry Lakes.

Ms. Karen MacDonald has led the HRM team in responding to the Landowners' proposals. It is fair to say that she is more constrained in developing a vision of how this park may be become a reality and upon what time lines, as her client is made up of each of the departments of HRM, each with its own policies, and legislative mandate. These constraints are to list a few:

- The existing 2014 Regional Municipal Planning Strategy ("Regional MPS") that does not expire before 2031, which identifies much of the Landowners' property in the urban reserve areas

designated for future development after 2031 or inside the urban settlement areas to be considered for development over the life of the plan, subject to the secondary planning process.

- HRM Planning staff's position that the Landowners' lands designated urban settlement should not be recommended for secondary planning at this time, as in their view, there is a surfeit of land within HRM development boundaries that should proceed ahead of these lands to the conclusion of the current plan.
- HRM parks and recreation department's assessment of required park boundaries according to its own policy guidelines (in a perfect world) but without any assessment of the cost to HRM to purchase from the Landowners over 625 acres they wish to see acquired for the Regional Park, or the cost of public access if built at the expense of the HRM and not at the expense of the Landowners in the course of development.
- To a lesser extent, the consultant retained by HRM to assess the real estate value of these lands using methodology for evaluating lands not within the development boundary, when clearly a fair market value/sub-division approach can reasonably be supported, in view of the future development potential of the lands. This will be less of an issue if land transfers and other consideration characterize the negotiations. Undervaluation of the lands, however, by HRM becomes a particular problem when it is HRM who controls the entry of these lands into the secondary planning process for development.
- HRM staff general concern that if development of these lands proceeded, there would be costs to the Municipality for continuing maintenance of subsequently deeded infrastructure, notwithstanding the additional tax revenues that would accrue to the HRM with development.

In any case, both Mr. Grant and Ms. MacDonald and their clients have worked diligently to negotiate a mutually agreed boundary that at one point looked as if it might be achievable. However one last consultation with the parks and recreation staff saw a retrenchment of their position leaving a proposed boundary that the Landowners say leaves them too little land to develop to achieve viable economic development and cost recovery of required infrastructure.

You need only place the two proposed plans, side by side, the MP3 plan advanced by HRM Staff and the Development Plan advanced by the Landowners, to see that without some guidance from Council, further negotiations are unlikely to be fruitful. This will mean that the Regional Park will not become a reality in the near future and may be delayed to 2031 and beyond.

Therefore we seek your guidance in answering the following questions, so that the facilitation may resume and hopefully conclude in an agreed park boundary that would be the subject of public consultation as contemplated by the terms of reference for this negotiation.

1. Does HRM Council wish to see the Blue Mountain/Birch Cove Lakes Regional Park established on a more current time line, than the MPS now realistically provides?
2. Does HRM Council wish to have public access to this Regional Park developed in partnership with the Landowners, who will incur at their own expense, proposed public access areas?

3. In consideration of the more timely creation and development of the Regional Park will HRM Council entertain the application of the Landowners for secondary planning and any required amendment to the MPS?
4. Will HRM Council direct staff to continue with the boundary negotiation based on the Developer's Plan of Concept?
5. Will HRM Council expect to receive a final Facilitator's Report which outlines further options should HRM wish to acquire additional lands from the Landowners for the Regional Park.

The attached interim report addresses each of these concerns in greater detail, as does the Background Document. I will await direction from Council and will happily reconvene the facilitation to complete the negotiation and present the results at a public consultation as contemplated by the terms of reference for this facilitation.

Yours very truly,

Original Signed

M. Heather Robertson

**FACILITATOR'S INTERIM REPORT REGARDING NEGOTIATION OF  
THE BOUNDARIES FOR THE BLUE MOUNTAIN/BIRCH COVE LAKES REGIONAL PARK  
IN RELATION TO THE HIGHWAY 102 WEST CORRIDOR**

**SUMMARY**

The 2006 Regional Municipal Planning Strategy ("Regional MPS") expresses HRM's intention to create the Blue Mountain-Birch Cove Lakes Regional Municipal Park. Conceptual boundaries for the park were established in Map 13 (attached as Appendix I). The conceptual boundary included private lands of Annapolis Group Inc. and Susie Lake Developments Limited in the area of Susie Lake and Quarry Lake. Only publicly owned lands within the boundary for the conceptual plan were identified for inclusion within the Regional Park Zone. The privately owned lands within the conceptual park boundary were zoned urban settlement and urban reserve, for ultimate development either within the 25 year life of the Regional MPS or beyond.

The Regional MPS states, "It is the intention that, over time, the necessary private lands within the park be acquired for public use. Methods of acquisition range from provincial and municipal partnerships, as financial resources permit, land trades and conservation easements. Once acquired, public lands within the park will be re-designated as Open Space and Natural Resource and zoned Regional Park. Lands outside the park will be designated and zoned for development as appropriate". The Regional MPS was finalized prior to the designation as wilderness area 3242 acres of the Provincial Crown lands adjacent to the privately held property. The Regional MPS specified Council's intention to acquire over time the necessary private lands. It is clear, however, that this is subject to the Municipality's financial ability and community interest. The private lands for park use were to be determined through negotiation of potential park boundaries.

On November 16, 2010, Regional Council directed Staff to undertake a watershed study for the Highway 102 West Corridor lands, to await the completion of Halifax Water's Wastewater Functional Plan and to proceed to negotiate boundaries for the Blue Mountain-Birch Cove Lakes Regional Park in relation to the Highway 102 West Corridor lands, through a facilitated process with an independent facilitator. The watershed study was completed and approved by HRM Council on June 26, 2013 and the functional waste water plan was completed and approved by the Nova Scotia Utility and Review Board in April 2014.

On September 17, 2013, Regional Council approved Terms of Reference for Regional Park boundaries negotiations. (Attached as Appendix II)

In March, 2014, I agreed to act as facilitator between the parties. Since that time, the parties have met with me on six occasions and have had numerous meetings in my absence in an effort to reach a consensus on park boundaries.

The lands of Annapolis Group and Susie Lake Developments (and other companies which like it are part of the Stevens Group) comprise 1,308 acres, of which Annapolis Group holds 965 acres and Stevens Group 343 acres.

Most of the Stevens Group lands is currently designated as Urban Settlement. Of Annapolis Group's land, 291 acres are zoned Urban Settlement and the remaining land is zoned Urban Reserve.

The lands identified as Urban Settlement are proposed under the Regional MPS to be considered for serviced development (municipal water and wastewater systems) over the life of the plan and subject to approval of a secondary planning process. Areas identified as Urban Reserve under the Regional MPS were viewed as areas where serviced development could occur outside the 25 year time horizon of the 2006 Regional MPS (2031).

To prepare for the facilitation, Annapolis Group and Susie Lake Developments undertook detailed engineering and planning to identify and price out the infrastructure which would be required in order to develop their lands. This included identifying the location and sizing requirements of streets, paths, parkways, sewer, water and storm water systems and road intersections and other connecting infrastructure. Because any development of the Urban Reserve lands would require servicing from lands in the Urban Settlement zone, development potential of these lands needed to be considered as well. The sizing and pricing of infrastructure within the Urban Settlement areas are dependent upon the nature of the development of the Urban Reserve areas. The timeline for development may be addressed in a phased development approach established through secondary planning taking into account factors such as the timing for providing safe public access to the regional park and to the wilderness lands.

Throughout the facilitation, the parties have explored the objectives of HRM's park planners and the means through which those objectives may be achieved in whole or in part. The landowners have consistently expressed concern that, if there is not sufficient area in the lands remaining for them to develop, the cost of necessary infrastructure will render the development of the remaining lands uneconomic.

While both representatives of Annapolis Group and Susie Lake Developments, and HRM, have put forward and explored a number of different concepts for park boundaries, and while there have been some areas of agreement reached, the positions of the landowners and HRM staff remain substantially apart. In order to determine whether this gap can be bridged it is necessary for HRM Council to provide further direction to HRM staff as to its regional park objectives and its budget for achieving them. The landowners have been able to evaluate the specific economic implications of any proposed changes to the regional park boundary and have adjusted their negotiating positions accordingly; HRM staff has not been able to respond in this fashion and have not taken into account HRM's fiscal considerations, the economics of development of the park, and the economics to the landowners of development of the private lands.

With respect to the development of the private lands and proceeding to secondary planning, HRM staff has considered the requirement under the Regional Plan to protect the fiscal health of HRM and its capacity to meet additional financial commitments. Staff's concern is with the on-going servicing costs to the Municipality to operate, maintain, renew and eventually replace infrastructure built by the developers (snow clearing, road maintenance, etc.). In addition, HRM bears the cost of providing services to the new communities (police, fire, etc.). Staff has also considered the existing land supply available for development on the fringes of the Urban Service Area.

The landowners note that all infrastructure required to develop their lands will be built at their costs with the exception of HRM's contribution for roads built fronting on HRM property or HRM's contribution for traffic generated by users of the regional park. The landowners dispute that the development of their lands would cause any incremental costs over that of any other development. Their development is highly efficient. They pointed out that the lands are in close proximity to major highways and arterial roads and could be serviced by existing HRM facilities such as fire station, police detachment, Thomas Raddall library, Canada Games centre,

Mainland Common, and transit terminal. The lands are proximate to HRM's solid waste facility. There are elementary schools and the Halifax West High School in the vicinity as well.

A summary of the background to the efforts to develop these lands, the intention to secure a portion of the area for a regional park and the sequence of the facilitation may be found attached as Appendix III (Background to Facilitator's Interim Report to Council).

A description of the optional boundaries proposed by Annapolis Group and Susie Lake Developments is attached as Appendix IV (the Development Plan). I would note the following considerations in connection with the Development Plan:

- Unlike the Development Plan prepared by the Landowners, the HRM proposal involves acquisition by HRM of a very large portion of the private lands, 625 to 675 acres of the lands of Annapolis Group, an area three times that of Point Pleasant Park. In view of its estimated investment of \$30 million in infrastructure to open its lands to development, Annapolis Group considers that this would render its remaining lands uneconomic to develop. Accordingly, it would look for HRM to acquire its entire landholdings which Annapolis values at over \$120 million.
- Elimination of development of Annapolis Group's land would impose higher infrastructure development costs upon both Susie Lake Developments and HRM as they will be unable to share costs of common infrastructure required for their development and the regional park.
- Limiting development in the vicinity of the park will reduce the number of users of both the regional park and the provincial wilderness park and will delay the opening of public access points to the park and to the Birch Cove Lakes. Instead of relying upon infrastructure and roads paid for by private development, HRM will have to consider if and when it can budget for the cost of such infrastructure on its own.
- HRM needs to decide as a matter of policy how much parkland it requires and is prepared to pay for, taking into account the proposed regional park is adjacent to a 3,242 acre wilderness park, an area approximately two-thirds of peninsular Halifax. See Site Location Plan Appendix V for a representation of the size of the parcels involved.
- Proposed parkland is set out in the Development Plan attached as Appendix IV. It entails 315 acres of parkland including the entirety of the Fox Lake shoreline and the remainder of the north shore of Susie Lake wrapping around land already designated as wilderness parkland.
- Annapolis Group is prepared to transfer 210 acres of parkland surplus to the 10 percent requirement of the Subdivision By-Law for \$6 million. Susie Lake Developments is prepared to sell to HRM portions of its lands additional to the 10 percent requirement, if these lands are required for the regional park at a price to be agreed upon. These proposals are conditional upon completion of secondary planning for the Highway 102 West Corridor lands. Annapolis Group has also indicated its willingness to adjust the boundaries of the regional park through the secondary planning process and to have the fair market value of its lands (additional to the 10 percent requirement) required for regional parkland determined by an independent arbitrator.
- Development under the Development Plan provides multiple points of public access to the proposed regional park and to Birch Cove Lakes at little public expense as roads and

intersections are built by developers. However, those roads, once accepted by HRM, will be maintained by the Municipality and there will be public expense associated with that road maintenance, though this is true for any development.

- The Development Plan appears to be more buildable and affordable for HRM and will result in an accessible regional park being made available to the public sooner than the alternative.
- The Development Plan features 315 acres of parkland which results in 64,100 feet of shoreline of the Birch Cove Lakes in public ownership and all privately owned shoreline protected by a riparian buffer.
- The Development Plan provides an opportunity to address pollution of the Birch Cove Lakes by diverting contaminating storm water emanating from Clayton Park and Bayer's Lake and currently entering Susie Lake to a man-made lake for further treatment as part of the development of the lands of Susie Lake Developments.
- Development of the private lands will utilize existing public facilities (see plan Appendix VI) and will not require any additional investment by HRM apart from sharing road costs for streets fronting HRM owned property (i.e. parkland) or for conventional cost sharing of major road structures based upon projected road traffic generated by users of the regional park and/or background traffic.
- Development will generate park users and increase access routes (roads and pathways) and modes of access (car, transit, bike, walk, run) to the park.
- The Development Plan allows for the extension of the COLTA trail through the development along the sides of Washmill, Susie and Quarry Lakes to Kearney and Charles Lakes. It also preserves for public park use waterfront property at the dam which controls the flow out of Quarry Lake.
- Dedication of parkland upon the completion of secondary planning will provide security that land for the regional park may be acquired and the regional park realized. Phasing of the development through secondary planning manages pace of development.
- Acceptance by HRM of the Development Plan as the basis for resolution of the regional park boundaries through a facilitated agreement will secure parkland for generations to come and amicably settle the regional park boundaries, an action it cannot delay indefinitely while not permitting the development of the lands.
- HRM Staff does not recommend Secondary Planning Strategies be initiated for the lands at this time, in accordance with Policy S-2 and S-3 of the Regional Plan. HRM staff takes the position that there is a 28 to 35 year supply of developable land in order to respond to residential growth.
- To permit development on the Annapolis lands that are zoned Urban Reserve and to set the boundaries for the Regional Park, the 2014 Regional Plan and the Halifax Mainland LUB will have to be amended.

HRM Park staff, in proposing optional boundaries for the Regional Park in Map 3A (Appendix VII), has identified three functions of a Regional Park: recreation, protection and community shaping.

- HRM Park staff say that Map 3A (fully achieves the regional park objective of protecting the old growth forest east of Fox Lake (protection).
- HRM Park staff considers that Map 3A partially achieves the regional park objectives of providing regional public lands and lakes for nature based recreation; providing front country recreation nodes; buildability; providing community parks; protecting water quality; providing a buffer to wilderness protected areas; contributing to the positive image at the regional level and within the Birch Cove Lakes Community; providing positive views from key locations; and providing a network of accessible open space.
- HRM Park staff considers that the Annapolis Plan fails or only minimally achieves many of these objectives. I disagree with this assessment.

### **Conclusion**

The selection of either boundary proposed by the landowners or HRM Park Staff will require an amendment to the Regional Municipal Planning Strategy and public consultation.

Of these two plans the most economical approach involves the setting of the regional park boundaries as proposed by the private land owners in the Development Plan.

The regional park boundaries proposed by HRM Park Staff would involve the acquisition of over 600 acres of private land at a very significant cost according to the appraisals prepared for either HRM or the landowners.

The regional park boundary proposed by the private landowners is predicated upon proceeding to secondary planning of their lands and the regional park.

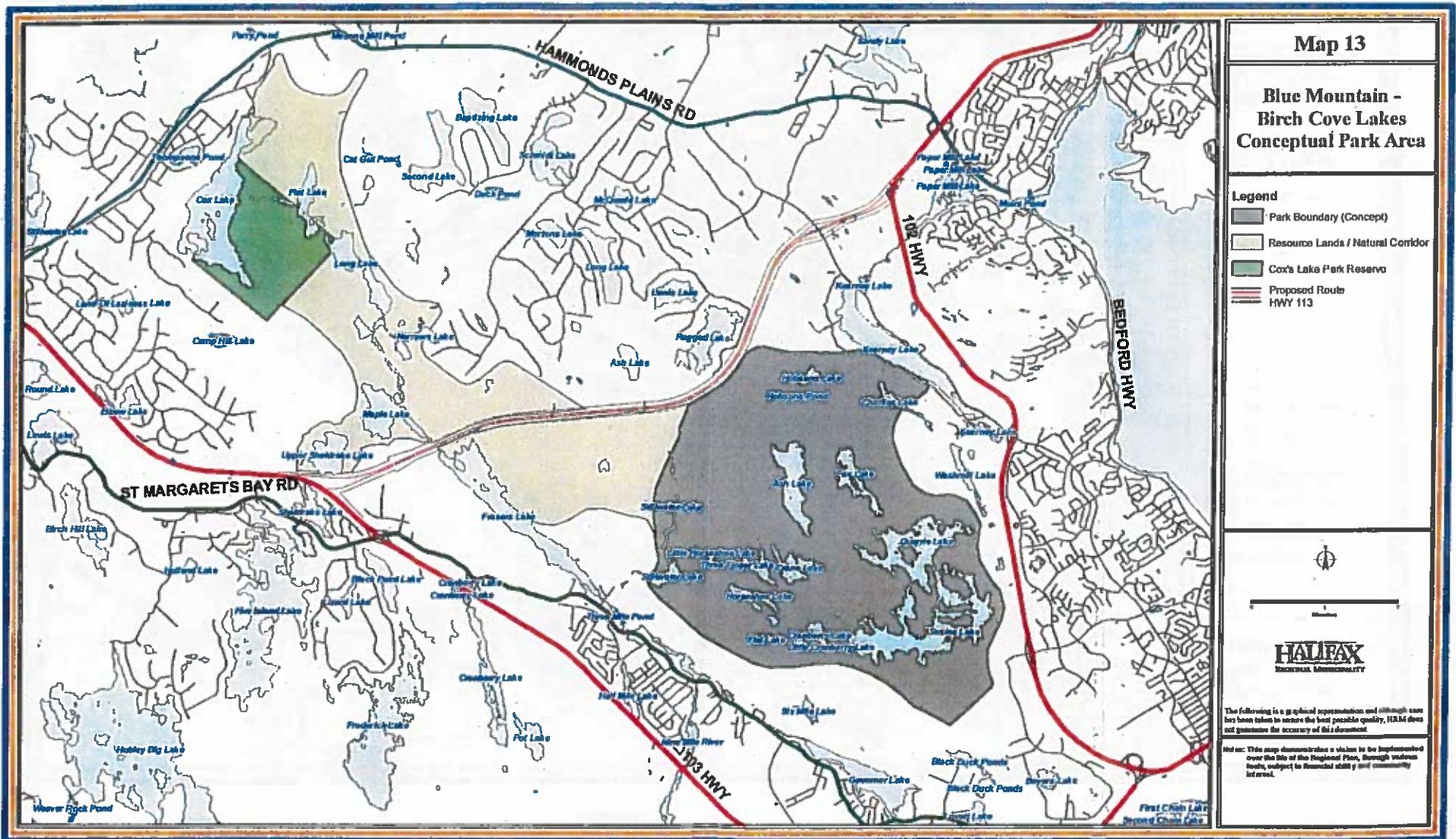
Dated at Halifax this 12th day of February, 2016.

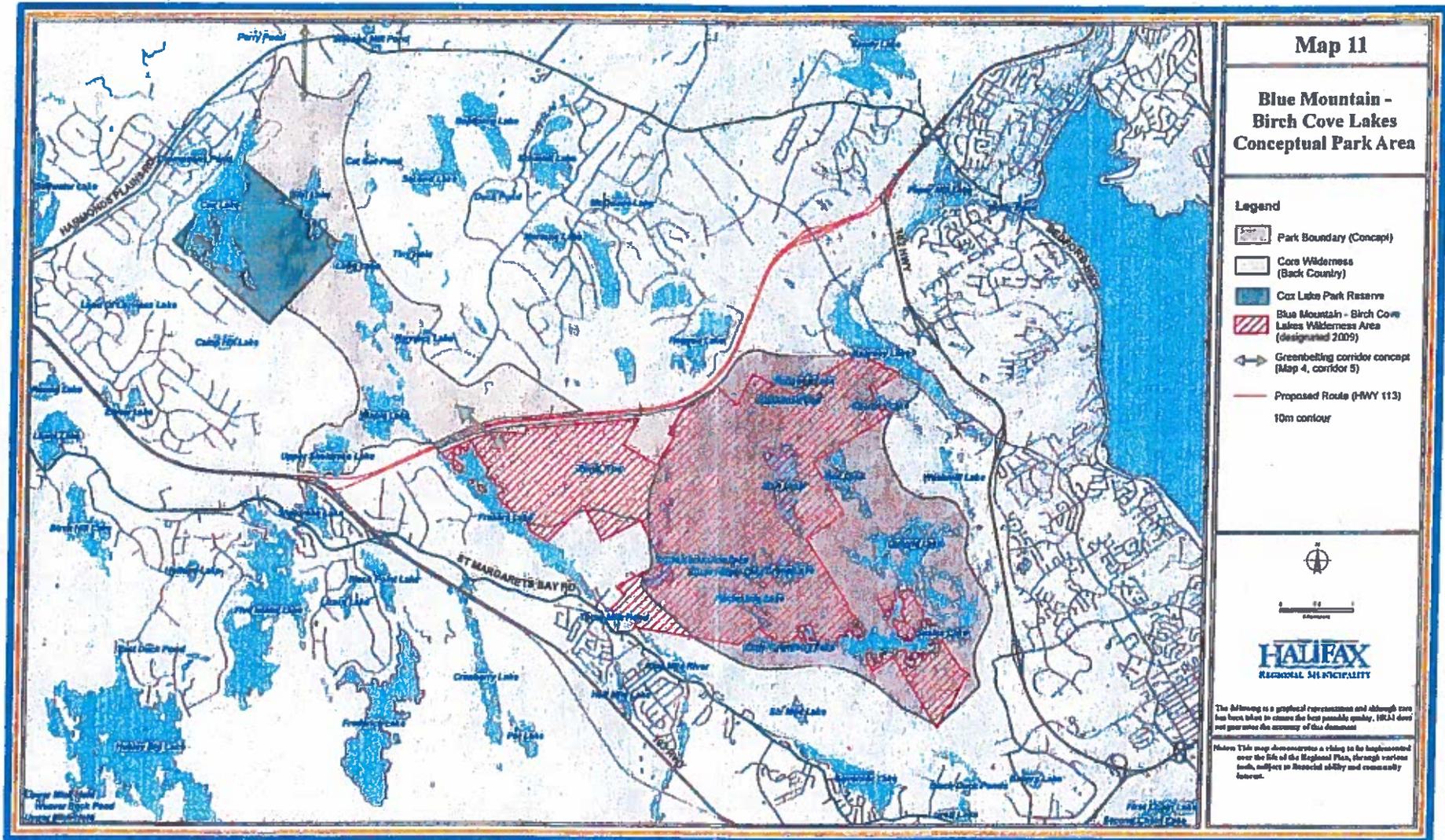
Original Signed

Justice M. Heather Robertson

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August 27, 2013

**Terms of Reference for Regional Park Boundaries Negotiations  
Highway 102 West Corridor Area and Engagement of an Independent  
Facilitator**

**CONTEXT**

The Highway 102 West Corridor Area is designated in the Regional MPS for urban serviced development. It is also a vision of HRM to have a regional park included in this area. At present, HRM does not own any land in this area. At the November 16, 2010 Regional Council Meeting, a motion was put and passed to: "Negotiate boundaries for the Blue Mountain – Birch Cove Lakes Regional Park in relation to the Highway 102 West Corridor lands through a facilitated process with an Independent Facilitator; and further, to bring the details of the proposed negotiation process back to Regional Council prior to entering into negotiations".

A budget of \$50,000 for the Independent Facilitator is allocated with the costs equally shared between HRM for one share and the property owners for the other share. The property owners are comprised of Annapolis Group Inc., Gateway Materials Limited, Westridge Developments Limited and the Sisters of Charity) ("the property owners").

**THE TASK**

HRM and the property owners will discuss entering into an agreement that achieves their respective objectives. To aid in such discussions, an Independent Facilitator will be retained by the parties. The Independent Facilitator will be jointly selected by HRM and the property owners. His or her work will be carried out over a six-month timeframe and a report will be filed.

**TERMS OF REFERENCE**

Article 1. HRM and the property owners will:

- (a) share information with one another and the Independent Facilitator and treat confidential information in accordance with Article 3;
- (b) share parkland concepts from HRM and development plans from the property owners, and look for areas of common agreement; and
- (c) explore with one another potential parkland boundaries, the financial terms and conditions for parkland acquisition, and the location of parkland dedication, that are acceptable to the parties.

Article 2. The Independent Facilitator will:

- (a) work with HRM and the property owners to determine how they wish to engage with each other;
- (b) determine the process to be followed for the facilitation;
- (c) assist the parties in resolving impasses to reaching agreement;

(d) assist the parties in their consideration of matters necessary to the successful conclusion to the negotiations. These matters may include, without limiting the matters for consideration, parkland functionality, development and servicing costs; appraisal methodologies, and market assumptions; and

(e) prepare an Independent Facilitator's Report that identifies areas of common agreement on parkland acquisition, dedication and integration; areas of disagreement with suggestions on resolution (if necessary); and options for resolution that will achieve the parties' objectives. The parties agree that they will cooperate, provide support for and assist the Independent Facilitator in the preparation of the Independent Facilitator's Report all while working under the Independent Facilitator's supervision.

**Article 3. Confidentiality of Shared Information and Negotiations**

(a) The Parties agree:

(i) it will be necessary to share information that is confidential in nature, that contains commercial or financial information the disclosure of which may reasonably be expected to affect the competitive position or negotiating position of the parties and which could result in an undue financial loss to a party if it is released or disclosed to a third party;

(ii) that HRM staff and the property owners will need to explore potential areas of compromise and avenues for resolution that have not been approved by Halifax Regional Municipal Council ("Council"), on the one hand, and the Boards of Directors of each of the property owners on the other hand;

(iii) that any agreement respecting this matter will be subject to the approval of both Council and the Boards of Directors of each of the property owners;

(iv) resolution of all issues and approvals as outlined in (iii) will be required before there is final agreement; and

(v) premature disclosure of the negotiations and their content to third parties and the public may jeopardize the efforts of the parties to conclude an agreement.

(b) For these reasons, the parties agree to treat the exchange of information, negotiating positions, and discussions as without prejudice and as confidential and agree not to disclose them to any person not directly involved in the negotiations.

(c) Information will be considered between the parties to be "confidential information" if it is identified as such by the disclosing party at the time of disclosure. Such information may include, amongst other things, parkland plans and concepts, information relating to the functionality of the proposed parkland; development concepts for property owners' lands, development economics, market conditions, and real estate appraisals both for land values and injurious affection.

(d) Each party shall identify for the other party the persons who are permitted access to confidential information pertaining to the negotiations and may add additional persons subject to the additional persons agreeing to be bound by these provisions.

(e) The property owners acknowledge that the terms of the agreement and the basis for an agreement will be subject to Council approval. This will become public information as Council considers the proposed agreement which may involve seeking some input from the public. Upon reaching terms of an agreement that HRM staff will recommend to Council, the property owners will consent to the release of this information to the public.

(f) Nothing in this Article protects from disclosure information required to be disclosed pursuant to Part 20 of the *Municipal Government Act* or court order.

(g) The Independent Facilitator shall agree to abide by these terms of confidentiality.

#### Article 4. Appointment of the Independent Facilitator

(a) Each party will propose, without contacting the candidate, the names of two candidates for the position of Independent Facilitator and present those names to the other for consideration;

(b) The parties will discuss the proposals and agree upon the order of preference for the candidates. The parties will jointly approach the preferred candidates in the agreed upon order to obtain information respecting their willingness to act, their availability, the terms of their contracts and to assure themselves that there is no conflict of interest impeding the person from acting. This process may be repeated if it does not result in an agreed upon Independent Facilitator;

(c) If the parties are unable to agree upon an Independent Facilitator, either party may give the other party notice to appoint an identified person as Independent Facilitator. If the other party does not agree within seven business days of receiving the notice, the party who gave the notice may initiate proceedings to apply to the Nova Scotia Supreme Court for a judge to appoint a person as the sole Independent Facilitator as if the application were to appoint a single arbitrator under the provisions of the *Arbitration Act*.

#### Article 5 Public Consultation

(a) Following the completion of the Independent Facilitator's Report, the parties will collaborate with one another and the Independent Facilitator regarding the timing, format and content of information to be made available to the public. The Independent Facilitator will, with the assistance of the parties, make arrangements for the public to receive information concerning the Independent Facilitator's Report. This may involve one or more meetings, may include presentations by the Independent Facilitator or the parties and may include an opportunity for members of the public to present their views in writing. The purpose of this public consultation is to assist Council in considering the recommendations of the Independent Facilitator or options presented in the Independent Facilitator's Report. The Independent Facilitator will not report on,

characterize or express opinions upon the public comments received by the Independent Facilitator. Public comments will be made available to Council.

## **APPENDIX III**

### **BACKGROUND TO FACILITATOR'S INTERIM REPORT TO COUNCIL**

#### **BACKGROUND**

- In 1956, Annapolis Group acquired the Bedford Dam System as part of its purchase of large vacant tracts of land in the former Town of Bedford and City of Halifax. The dams create a series of reservoirs: Quarry Lake-Suzie's Lake; Kearney Lake; and Paper Mill Lake.
- Annapolis still owns and maintains these dams and since 2006 has spent \$10 million to bring these dams up to the new Canadian Dam Safety Guidelines

#### **1996 Porter Dillon Study**

- 1996 Porter Dillon study commissioned by the City of Halifax concluded that approximately 80% of the study area can accommodate all five categories of development (low to medium density residential, high density residential, large scale commercial and industrial, developed recreation facilities and passive recreation).
- The suitability assessment determined that the environmental constraints for development could be addressed through mitigative measures

#### **2004 CBCL Greenfield Area Servicing Analysis**

- Prepared for HRM as part of the background studies for the Regional Plan
- Analyzed 10 areas, including Birch Cove North/Governor Lake, for servicing with water, sewer and storm water facilities.
- Concluded the Birch Cove Lake North/Governor Lake area was a low cost area for urban servicing and development. Only major constraint was the existence of the quarry
- Concluded Birch Cove Lakes/Governor Lake was one of 5 sites with some constraint to development (2 other sites had minimal constraints to development and three sites were not recommended for development)

#### **Blue Mountain Birch Cove Assessment Study by EDM, March 2006**

- Prepared for HRM, the Nova Scotia Department of Transportation and Public Works, and the Nova Scotia Department of Natural Resources, to identify an ideal regional park configuration for the Blue Mountain Birch Lakes area. The area considered in this study was a large area encompassing the lands of Annapolis Group and Susie Lake Development as well as the adjacent provincial Crown lands and other privately owned lands.
- Concluded that "the unique aspect of this particular wilderness is its location. The study area offers a wilderness experience immediately adjacent to a densely developed city." (Page 43)
- "The results of the landscape assessment suggest that the study area, while special as a wilderness assemblage, does not rank as outstanding ecologically at the regional or provincial

level. There are no known significant or rare landscape elements within the Study Area that suggest the overall property should receive protection for its ecological merits. There are also no individual elements, which if not included, would greatly diminish the ecological value of the park." (Page 43)

- Suitability attributes for the park boundaries were determined through the collaborative efforts of HRM, TPW, DNR, and EDM. The agreed upon list of attributes for the regional park included:
  1. Cultural considerations (pre-contact archeological potential and geological resources);
  2. Water course protection;
  3. Residential suitability;
  4. Species richness;
  5. Views from core lakes; and
  6. Active recreation suitability.
  
- When selecting the most appropriate park configuration, the final boundary should include:
  1. A large intact patch that is isolated from development;
  2. Provided there is a large patch, areas incorporating more of the valued park attributes should be preferred over those that do not; and
  3. Susie's Lake and Blue Mountain should both be within the park boundary.
  
- The park area selected should be highly accessible from new and existing communities.
- The areas selected for the most intense recreational activities should be immediately adjacent to areas that have existing or planned future community development.
- The proposed park area should be connected to at least one and preferably two adjacent resource lands (wilderness corridors). This connectivity is necessary to maintain species richness and diversity within the park boundary over the long term.
  
- The area proposed for the park should include the following elements:
  1. A core wilderness area that is silent and isolated;
  2. A surrounding area of edge wilderness that is the focus of wilderness recreational activities;
  3. A meaningful landscaped corridor connecting the designated park area to the extensive crown holdings and beyond;
  4. An area of community development around an interest burst with the edge landscape of the park that is designed in a manner to implement CPTED principles;
  5. At least one and preferably two significant regional access locations; and
  6. Linkages to all of the surrounding communities including active transportation initiatives.

- The core area should be large enough to include a full day walk on foot in an atmosphere that feels isolated. Access to the core wilderness area should be entirely through the surrounding edge wilderness area, allowing the edge to provide a buffer zone to the core landscape.
- The edge wilderness landscape should be band of wilderness ranging in depth from approximately 100-1000 metres around the core landscape.
- Development should not feel like it is impinging on the park, and yet it must be accessible. The recommended shape for the future boundary with a park is curvilinear, with interest burst areas of community development.

#### ***2006 Regional Plan:***

- The 2006 Regional Municipal Planning Strategy was adopted by Regional Council in June, 2006 and was effective August 26, 2006

#### ***Chapter 2: Environment, Section 2.1.3 Regional Parks***

- The primary objective of a Regional Park will be to preserve and protect significant natural and cultural resources.
- Regional Parks are public lands that have been recognized as regional parks based on their open space, wilderness, scenic beauty, flora, fauna, recreational, archeological, historic or geological resources.
- A Regional Park will have sufficient land area to support outdoor recreational opportunities for the enjoyment and education of the public and must be sufficient to ensure that its significant resources can be managed so as to be protected and enjoyed.
- HRM intends to create additional Regional Parks at various locations, including Blue Mountain-Birch Cove Lakes
- The 2006 EDM study was completed to determine appropriate boundaries for the park; a conceptual geographic area for the park is shown on Map 13 of the 2006 Regional Plan. "This map demonstrates a vision to be implemented over the life of the Regional Plan, through various tools, subject to financial ability and community interest".
- The land is both publically and privately owned. It is the intention that, over time, the necessary private lands within the park will be acquired for public use.
- Methods of acquisition range from provincial and municipal partnerships, land trades and conservation easements.
- Once acquired, lands within the park will be re-designated as open space and zoned Regional Park; lands outside the park will be designated and zoned for development as appropriate.

#### ***Chapter 3: Settlement and Housing; s. 3.1 Urban Settlement Designation and s. 3.2 Urban Reserve Designation***

- Five land use designations were created for achieving the growth management strategy of the Plan, including the Urban Settlement and the Urban Reserve Designations.

**Urban Settlement Designation:**

- Six sites are identified as potential areas for new urban growth, subject to the completion of secondary planning processes for each area:
  1. Bedford South;
  2. Morris-Russell Lake;
  3. Bedford West;
  4. Port Wallis;
  5. Sandy Lake; and
  6. Highway 102 west corridor adjacent to Blue Mountain-Birch Cove Lakes Park.
- Policy S-1 of the Plan states that HRM shall establish the Urban Settlement Designation as the area where central wastewater and water distribution services are intended to be provided to facilitate an urban form of development over the next 25 years (2006-2031).
- Under Policy S-2, when considering amendments to the Urban Settlement Designation Boundary, HRM shall consider:
  - a) amendments to the boundaries to include additional areas to implement the results of reviews of regional population and housing forecasts;
  - b) amendments to the boundaries of designations if the targets for growth under this Plan are not being met; and
  - c) amendments to include adjacent lands if the lands are within a growth centre.
- Policy S-3 of the Plan indicates that HRM shall consider requests to allow for the initiation of a secondary planning process to consider development of the six sites for new growth provided that any such proposal serves to:
  - a) protect the fiscal health of HRM and its capacity to meet additional financial commitments; and
  - b) address any deficiencies in municipal service systems which would be needed to service the proposed area and the estimated cost of upgrades needed to provide a satisfactory service level.

**Urban Reserve Designation:**

- The following seven areas have been designated as Urban Reserve:
  1. Interior lands bounded by Highway 7, Ross Road, Highway 207 and Broom Road (Cole Harbour/Westphal);
  2. Land surrounding Anderson Lake area (Dartmouth/Bedford);
  3. Governor Lake North (Timberlea);
  4. Ragged Lake (Halifax);
  5. Kidston Lake lands (Spryfield/Herring Cove);

6. Purcell's Cove area back lands; and
  7. Private lands in the Blue Mountain-Birch Cove Lakes Regional Park area.
- Policy S-4 states that HRM shall establish the Urban Reserve Designation for those lands situated outside the Urban Settlement Designation where central services may eventually be provided. The primary intent of this designation shall be to retain sufficient lands which shall provide an adequate supply of serviceable land and beyond the time horizon of this Plan (after 2031).

#### ***2009 Designation of the Blue Mountain-Birch Cove Wilderness Area***

An Order in Council dated April 2, 2009 designated approximately 3,242 acres of Crown land adjacent to the lands of Annapolis Group and Susie Lake Developments as the Blue Mountain-Birch Cove Lakes Wilderness Area under the *Wilderness Areas Protection Act*. By another Order in Council dated March 24, 2015, areas of Crown land totalling approximately 1,100 acres to the north and west were added to this wilderness protected area.

These designations address many of the objectives of the EDM study.

#### ***2014 Regional Plan:***

- The 2014 Regional Municipal Planning Strategy was passed by Regional Council on June 25, 2014, and is in effect as of August 15, 2015.

#### ***Chapter 2: Environment, Energy and Climate Change, s.2.2.3 Regional Parks***

- The provisions with respect to regional parks and the lands within the Blue Mountain-Birch Cove Lakes Park have not changed from the 2006 Regional Plan
- The conceptual park boundaries are set out in Map 11 of the 2014 Plan, which is the same as Map 13 in the 2006 Plan.

#### ***Chapter 3: Settlement and Housing, s.3.2.1 Urban Settlement Designation and s.3.2.2 Urban Reserve Designation***

##### **Urban Settlement Designation**

- Includes 3 designated growth areas where Secondary Planning Strategies have been approved (Morris-Russell Lake, Bedford South, and Bedford West) and 3 areas for future serviced communities, subject to HRM approval of secondary planning (Port Wallis, Sandy Lake, and the Highway 102 west corridor adjacent to Blue Mountain- Birch Cove Lakes Park.
- Policy S-1 states that the Urban Settlement Designation encompasses those areas where HRM approval for serviced development has been granted and to undeveloped lands to be considered for serviced development over the life of the Plan.

- Policy S-2 states that where requests are received to initiate secondary planning for any of the areas identified as potential growth areas in the Plan, consideration shall be given to:
  - a) the need for additional lands and the fiscal implications to HRM and Halifax Water and their capacity to meet additional financial commitments; and
  - b) the implications for achieving the HRM growth targets.

#### Urban Reserve Designation

- The 7 areas designated as Urban Reserve are the same in the 2014 Plan as they were in the 2006 Plan.
- Policy S-3 states that the Urban Reserve Designation shall be established to identify those lands situated outside the Urban Settlement Designation where serviced development may be provided after the life of the Plan.
- Policy S-4 states that HRM shall establish an Urban Reserve Zone to regulate development of lands within the Urban Reserve Designation. The Zone shall permit open space uses and limit residential development to existing lots.

#### *Halifax Mainland Land Use By-Law:*

- The following uses are permitted in the Urban Settlement Zone:
  - 1) Single family dwellings, on lots on an existing road(s) provided that a private on-site sewage disposal system and well are provided on the lot;
  - 2) Passive recreation uses;
  - 3) Public parks and playgrounds; and
  - 4) Uses accessory to the foregoing uses
- The following uses are permitted in the Urban Reserve Zone:
  - 1) Single family dwellings, on existing lots or lots approved pursuant to Section 38 of the Subdivision By-law provided that a private on-site sewage disposal system and well are provided on the lot;
  - 2) Passive recreation uses; and
  - 3) Uses accessory to the foregoing uses

#### THE HISTORY BEFORE COUNCIL AND STAFF

##### *Request for Secondary Planning Approval*

- On September 25, 2007, Birchdale Projects Inc. on behalf of itself and the other property owners, including Annapolis Group and Susie Lake Developments, requested initiation of the secondary planning process

- On October 17, 2007, HRM's manager of planning services wrote to the private property owners to advise that the Municipality had commenced a study to determine the cost of servicing their area as well as the Sandy Lake and Port Wallis areas eligible for secondary planning with a view to recommend to council whether to proceed with secondary planning for each site.
- CBCL was awarded this study in November 2007. Because of delays in completing this study the private property owners asked on December 18, 2008 that their application for secondary planning approval be placed on hold.
- CBCL submitted its study on February 3, 2009. CBCL's study indicated there were no substantive negative impacts for the serviced development of the Highway 102 West Corridor.
- On July 31, 2009, the private property owners submitted a detailed request to commence secondary planning for the subject lands.

***Regional Plan Advisory Committee (RPAC) Report and Minutes, October 21, 2009***

- The report originated from requests to initiate Secondary Planning Strategies for Port Wallis, Sandy Lake, and Highway 102 West Corridor adjacent to Blue Mountain – Birch Cove Lakes Park.
- The RPAC concluded that there was an ample supply of land to satisfy the development needs of HRM for the foreseeable future and ensure a competitive market.
- The RPAC recommended that the requests be deferred to the second of the five year reviews of the Regional Plan in 2016, but no motion was made at the October 21, 2009 meeting.
- The property owners did not receive a copy of the HRM Staff Report to RPAC study until October 19. As the proponents did not have time to review the report in detail in preparation for the RPAC meeting, they wrote to the Chair of the RPAC requesting that the committee allow for their submissions before making any deliberations on the report.
- Birchdale Projects Inc. on behalf of the private landowners retained Ernst & Young to conduct an independent analysis of HRM's staff's conclusion regarding the HRM's share of infrastructure costs to develop the subject lands. It also retained Altus Group to review staff's conclusions of the adequacy of residential land supply within the suburban areas of HRM.
- Altus' opinion was that staff's conclusions failed to follow best practises for assessing long term residential land requirements and could not be relied upon.
- Ernst & Young's opinion was that the HRM staff report significantly overstated HRM's share of infrastructure costs by \$26 million. It also found staff's report to be deficient in terms of established finance theory and principles and contained analysis regarding surplus residential land what was not sufficiently refined and resulted in a false conclusion.
- The Altus and Ernst & Young Reports were submitted to HRM staff and the RPAC. These reports were under active discussion between the property owners and HRM Staff.
- The parties differ on the significance of the Altus and Ernst & Young reports to the events that ensued. Annapolis Group and Susie Lake Development assert that the staff recommendation to the June 23, 2010 RPAC was made to address their concerns so staff would not have to respond to these reports.
- HRM staff disputed the findings and conclusion in the Ernst & Young Report on the basis that the financial analysis used inputs and assumptions that were not realistic, consistent or accurate and led to erroneous conclusions. The Ernst & Young Report was withdrawn.

- The landowners' position is that they did not press for a response to the Ernst & Young report in view of the resolution of June 23, 2010. They continue to consider the Ernst & Young report (and the Altus report) to be correct.
- Annapolis Group and Susie Lake Developments assert that HRM staff advised them that before it could recommend proceeding to secondary planning a resolution had to be reached concerning the conflict between regional park and other serviced land uses.
- The Regional Plan Advisory Committee (RPAC) recognized a need for acquiring private land for the Regional Park and the possibility of resolving this as part of the process pertaining to the request to commence secondary planning

***Regional Plan Advisory Committee Report and Minutes, June 23, 2010***

- Staff reviewed the Altus report obtained by the developers and a copy was included in the June 23, 2010 report to RPAC. Following the recommendations in the Altus report staff projected build out capacities of potential housing units rather than the population growth capacity, but reached a similar conclusion with respect to the existing supply of suburban land.
- Staff maintained that initiating Secondary Planning Strategies for each of the 3 areas (Highway 102 West Corridor, Sandy Lake and Port Wallis) was premature and inconsistent with one of the principals of the Regional Plan to maintain growth in a cost effective manner.
- Following discussions between HRM staff and the proponents of the Highway 102 West lands, the following phased process was being recommended by staff:
  - 1) Undertake a watershed study for the Highway 102 West Corridor lands and wait for completion of Halifax Water's wastewater functional plan;
  - 2) Negotiate boundaries for the Blue Mountain/ Birch Cove Lakes Regional Park in relation to the Highway 102 West Corridors lands. An independent facilitator would be retained to assist the Municipality and Birchdale to negotiate potential park boundaries. The facilitator would table an options report with the ramification of each option for consideration by each party and Council would provide direction as to how it wants to proceed; and
  - 3) Review the criteria under Policy S-1 of the Regional Plan to determine whether to initiate a secondary planning process for Highway 102 West Corridor lands. Assuming a mutually acceptable park boundary can be agreed upon, the Municipality would reconsider the request to initiate a secondary planning process for the remaining lands.

***Regional Plan Advisory Committee Report and Minutes, August 11, 2010***

- A motion was put and passed at the August 11, 2010 RPAC meeting to recommend that Halifax Regional Council do the following:
  1. Undertake a watershed study for the Highway 102 West Corridor lands and await completion of Halifax Water's wastewater functional plan;

2. Negotiate boundaries through a facilitated process with an independent facilitator for the Blue Mountain-Birch Cove Lakes Regional Park in relation to the Highway 102 West Corridor lands; and
3. Defer the review of criteria under Policy S-3 of the Regional Plan to determine whether to initiate a secondary planning process for the Highway 102 West Corridor lands.

***Halifax Regional Council Committee of the Whole Report and Minutes, November 16, 2010***

- Request by property owners for the Municipality to initiate secondary planning strategies in the 3 areas identified by the Regional Plan as Port Wallis, Sandy Lake and Highway 102 West Corridor.
- The following motions were put and passed by Council:
  1. That Halifax Regional Council direct staff to undertake a watershed study for the Highway 102 West Corridor lands and await completion of Halifax Water's wastewater functional plan;
  2. That Halifax Regional Council direct staff to negotiate boundaries for the Blue Mountain-Birch Cove Lakes Regional Park in relation to the Highway 102 West Corridor lands through a facilitated process with an independent facilitator, and further, to bring details of the proposed negotiating process back to Regional Council prior to entering into negotiations;
  3. That Halifax Regional Council defer the review of criteria under Policy S-3 of the Regional Plan to determine whether to initiate a secondary planning process for the Highway 102 West Corridor lands.

***Halifax Regional Council Meeting June 25, 2013***

- The preliminary watershed study was presented on October 26, 2012 and the final document was presented on March 6, 2013, both at public meetings hosted by the Bedford Watershed Advisory Board
- At the June 25, 2013 meeting, Regional Council passed a motion to accept the Birch Cove Lakes watershed study.
- The watershed study concluded that the majority of the subject lands could be developed without affecting established water-quality objectives. The study also identified constrained areas such as wetlands, 20 m. riparian buffers, steep slopes, designated habitats and old growth forest.

***Halifax Regional Council Report and Meeting, September 17, 2013***

- Halifax Regional Council passed the following motions:
  1. Accept the Terms of Reference for an Independent Facilitator to help HRM and the developers' representatives reach a negotiated agreement on potential regional park boundaries, parkland acquisition and development of the Highway 102 West Corridor lands;
  2. Authorize staff to enter into discussions with the developers' representatives for the purposes of securing the services of an Independent Facilitator as per the terms of the July 8, 2013 staff report;

3. Until such time as the facilitator has provided the Municipality with his or her report or unless the information has already been disclosed under freedom of information, any confidential information arising from the facilitation process shall be discussed by Council at a closed session; and
4. Ensure there is public consultation as per article 5 of the Terms of Reference, prior to Regional Council making a decision on the potential negotiated agreement.

#### ***Waste Water Functional Plan***

- Halifax Regional Water Commission (HRWC) made an application in 2013 for approval of a regional development charge (RDC) to allow for future water and wastewater infrastructure. The projects identified in the application included those required to service the subject lands. The application was approved in April 2014 by the Nova Scotia Utility and Review Board.
- The private landowners negotiated an MOU with HRWC in 2012 to enable servicing of its site through upgrades to the Kearney Lake trunk sewer. Annapolis has already invested in upsizing of pipe in Annapolis Group's Glenbourne subdivision to handle effluent from the subject lands.

#### **HISTORY OF FACILITATION AND OTHER MEETINGS**

- Justice Heather Robertson was retained as the Facilitator in March, 2014.
- HRM staff and representatives of Annapolis Group and Susie Lake Developments attended facilitation on the following dates: November 25 and 26, 2014, February 18, 2015, June 23, 2015, August 5, 2015, and October 1, 2015.
- Representatives of the parties met on their own without the Facilitator on numerous occasions between the facilitations.

#### ***November 25 and 26, 2014***

- Correspondence was sent by both HRM and the developers to Justice Robertson prior to the meeting, setting out a summary of each party's position
- HRM delivered a presentation on the background of the BMBC Regional Park and the park vision as established through the EDM report and the Regional Plan
- Susie Lake Developments and Annapolis Group delivered a presentation on their vision for the park boundaries and the development of their respective lands.
- Annapolis and Susie Lake Developments presented a map showing the development of their lands with 28% and 18% dedicated as parkland.
- This concept for development was supported by detailed engineering studies and costing and represents an economically feasible development plan. Locations for infrastructure and streets have been chosen with this in mind and with a view to have an efficient development that balances environmental concerns, park access and economic feasibility. The development plan incorporates design features which accentuate the natural environment and integrate the community into the regional park and provide access to the lakes and wilderness country. This is all illustrated in the conceptual 3 D video prepared by Ekistics on behalf of the proponents. The design can be refined further in the course of secondary planning and would be assessed at a closer level by HRM staff at that time.
- Key issues raised/discussed:
  - a) Lands are currently zoned urban settlement and urban reserve

- b) Both landowners were clear that any agreements on the boundaries were subject to secondary planning approval. Both landowners believe this is necessary not only for economic reasons but also to ensure the park boundaries and development are efficient, workable and advance public and private objectives.
  - c) HRM was clear that staff cannot guarantee secondary planning approval at this time
  - d) Roads and other infrastructure are necessary to develop not only the landowners' lands but also to open up access to the regional park and wilderness park
  - e) To plan for the development of the urban service areas, it is necessary to know the nature of the development of the urban reserve areas as all access and services will go through urban service areas
  - f) The requirement for both front country and back country lands
  - g) Protection of Fox Lake and the buffer zone for all waterfront land
  - h) Protection of the islands and their value to both the Park and the landowners
  - i) Cost of development, from both the landowners' perspective and from HRM's perspective
  - j) Different approaches to the valuation of the land
  - k) What can be achieved through the 10% parkland dedication
  - l) Need to balance park ambitions with what is affordable
  - m) Consider the proposed regional park in the context of being adjacent to a provincial wilderness park that is 3,242 acres in area (to which 1,100 acres has since been added.)
- At the end of the second day, the parties and Justice Robertson agreed to schedule a date in the New Year for the continuation of the facilitation. In the break between meetings, the parties were going to work on a number of issues that had been raised, including developing alternate park and development boundary maps, obtaining values of certain sections of the land, and reviewing methods of acquisition
  - In addition, there were various meetings held between HRM staff and representatives of Annapolis Group and Susie Lake Developments, separate and apart from the facilitation; these meetings were primarily with HRM Park staff in between the various facilitation dates.

*February 18, 2015*

- Annapolis Group and Susie Lakes Developments provided revised concept maps of their respective plans for development and their proposed boundaries for the Regional Park
- It was agreed that further information was needed from both HRM and the landowners
- Tasks were identified for HRM and the landowners to complete before the next facilitation, including:
  - a) A review of the various plans from a regional park perspective
  - b) A review of the costs to HRM of the developments proposed by the landowners
  - c) A review of transportation needs
  - d) An overview of the secondary planning process
  - e) A review of each side's respective valuations, methodologies and underlying assumptions.
- HRM Park staff and the landowners were going to meet to discuss the regional park priorities

*June 23, 2015*

- HRM staff confirmed in a meeting with the proponents and their engineering consultants that the proponents' lands could be developed with no significant investment required by HRM.

HRM's capital cost sharing would be restricted to cost of road construction necessary to accommodate park users and capital charges for roundabouts and intersections to the extent caused by traffic originating from outside the development.

- HRM staff also indicated, however, that there would be on-going servicing costs to the Municipality to operate, maintain, renew and eventually replace infrastructure built by the developers (snow clearing, road maintenance, etc.). In addition, HRM bears the cost of providing services to the new communities (police, fire, etc.).
- The landowners disputed that the development of their lands would cause any incremental costs over that of any other development. Their development is highly efficient. They pointed out that the lands are in close proximity to major highways and arterial roads and could be serviced by existing HRM facilities such as fire station, police detachment, Thomas Raddall library, Canada Games centre, Mainland Common, and transit terminal. The lands are proximate to HRM's solid waste facility. There are elementary schools and the Halifax West High School in the vicinity as well.
- The landowners provided revised development plans, to be reviewed and assessed by HRM staff
- Discussions took place around the material provided by HRM staff following the last facilitation.
- Robert LeBlanc from Ekistics Plan +Design presented an analysis of HRM's priorities for the regional park with the proponents' responses and presented a conceptual 3 D video showing how the development could be integrated with the proposed park.

*August 5, 2015*

- *HRM provided two alternate regional park boundary maps, prepared by HRM park staff*
- *Focus is on lands of Annapolis Group*
- *General agreement reached with Susie Lakes on park boundaries and appraisal of land, but secondary planning approval is still a requirement for a final agreement (all subject to Council approval)*
- *HRM park staff's review of the Annapolis map is discussed*

*October 1, 2015*

- HRM staff set out position re recommended regional park boundary map
- Further discussion on valuation
- Annapolis Group provided valuation information with respect to pieced out sections of their land that HRM park staff has recommended remain within the regional park boundary, based on the appraisal obtained by Annapolis

#### **DOCUMENTS PROVIDED AND EXCHANGED**

- The Annapolis Group has provided the following:
  1. Report on Highway 102 West Lands Master Plan Development, prepared by Summit Rock Developments Ltd., in association with EastPoint Engineering Ltd., Ekistics Planning and Design, and Turner Drake & Partners Ltd., dated June 23, 2014
  2. Report on Highway 102 West Lands Master Plan Development – Infrastructure Costs, prepared by Summit Rock Developments Ltd., in association with EastPoint Engineering Ltd., Ekistics Planning and Design, and Turner Drake & Partners Ltd., dated June 18, 2014

3. Report on Highway 102 West Lands Masterplan Development - Appendices to Infrastructure Cost Report, prepared by Summit Rock Developments Ltd., in association with EastPoint Engineering Ltd., Ekistics Planning and Design, and Turner Drake & Partners Ltd., dated June 18, 2014
  4. Master Valuation Report of Highway 102 West Lands Master Plan Development, prepared by Lee Weatherby of Turner Drake & Partners Ltd., as of July 30, 2014
  5. Valuation Review Assignment Report prepared by Lee Weatherby of Turner Drake & Partners Ltd., dated April 20, 2015
  6. Blue Mountain Birch Cove: Concept Development Plan Open Space Framework prepared by Ekistics Plan+Design dated June 18, 2015
- Susie Lake Developments provided a report entitled Negotiation Submission – Highway 102 Corridor Lands, Development of a Blue Mountain Birch Cove Lakes Regional Park Boundary, prepared by Upland (Urban Planning and Design Studio) and submitted June 4, 2014
  - HRM provided the following reports:
    1. an Appraisal Report of the Annapolis Group holdings within the Blue Mountain Birch Cove Park/Highway 102 Corridor Lands, prepared by Altus Group Ltd., as of February 21, 2015;
    2. an Appraisal Report of the Susie Lake Development holdings within the Blue Mountain Birch Cove Park/Highway 102 Corridor Lands, prepared by Altus Group Ltd., as of February 21, 2015; and
    3. a review of the Highway 102 West Lands, Master Plan Development Turner Drake Appraisal Report, prepared by Altus Group Ltd., as of June 16, 2015

**REGIONAL PARK CRITERIA FOR BMBC REGIONAL PARK**

- The primary objective of a Regional Park will be to preserve and protect significant natural or cultural resources
- HRM Park staff identified 3 key park functions for the BMBC Regional Park:
  1. Recreation;
  2. Protection; and
  3. Community shaping.
- These three functions are based on the purpose and objectives of a Regional Park under the Regional Plan, and align with the 2006 EDM study.

***Recreation***

- HRM Park staff identified the following objectives:
  1. Provide regional public lands and lakes for nature based recreation: a public park providing for a wide spectrum of user abilities and interests
  2. Linear trails: create a primary spine linear trail system that functions for nature-based recreation and active transportation connecting neighbourhoods and communities and

connecting to the larger regional system (Colta, Mainland North Linear Trail, Bedford West).

3. **Front country recreation nodes:** provide areas for concentrated recreation activities and education, as well as necessary support infrastructure (parking, washrooms, launches, shelters, stacked loop trails, guarded swimming, etc.)
4. **Access:** provide appropriate level and ease of public access and park presence while respecting the limitations of the *Wilderness Protection Act*. Provide trailhead entrances and supports at entrances to back country areas.
5. **Buildability:** ensure areas for recreation are buildable without undue destruction of natural assets and undue costs.
6. **Community parks:** provide community-related facilities (sports fields, playgrounds).

#### ***Protection***

- HRM Park staff identified the following objectives:
  1. **Water quality:** protect water quality of headwater lakes (Fox Lake, Ash Lake, Susie Lake, Charles Lake and Pond, Quarry Lake, and Washmill).
  2. **Old growth forest:** conserve old growth stand on slopes east of Fox Lake.
  3. **Riparian buffer:** adequate undisturbed area adjacent to lakes and streams to maintain ecosystem.
  4. **Buffer wilderness protected areas:** buffer from development and from intensive recreation use. View planes for the front country and back country.
  5. **Natural connectivity:** provide connectivity of natural areas

#### ***Community Shaping***

- HRM Park staff identified the following objectives:
  1. **Park image:** contribute to the positive image (regional level, Birch Cove Lakes Community, and wilderness park presence).
  2. **Positive views from key locations:** key view areas (Blue Mountain, Quarry Lake Hill, Birch Cove Lakes Canoe Route, and back country protected area lakes).
- 3. **Network of accessible open space:** proximity to high use public open space system.

#### **APPLICATION OF CRITERIA BY HRM PARK STAFF**

- HRM Park staff proposed two alternate boundaries for the BMBC Park, from that set out in Map 13 of the 2006 Regional Plan (Map 11 of the 2014 Regional Plan). They are identified as Map 3 and Map 3A.
- Staff will be recommending Map 3A
- Annapolis Group and Susie Lake Developments proposed alternate park boundaries, with their final submission being the map of July 27, 2015
- Under the HRM Maps 3 and 3A, the Susie Lake Development lands no longer fall within the BMBC Regional Park boundary
- If Council adopts HRM Map 3 or 3A as the new proposed regional park boundary, then parkland dedication for the Susie Lakes property will be determined through the secondary planning process.
- HRM Park Staff evaluated Map 3, Map 3A and the July 27 Annapolis Map, using the criteria set out within the three key park functions
- HRM and the developers each set out the pros and cons of each party's respective proposed park boundaries. These can be found following the Executive Summary of this report.

#### SECONDARY PLANNING

- Susie Lake Developments and Annapolis Group have indicated that an agreement cannot be reached with respect to any park boundary for the BMBC Regional Park without Halifax Regional Council granting their request to initiate Secondary Planning Strategies for their lands.
- For Annapolis Group, this includes the lands currently zoned Urban Reserve
- HRM Planning staff does not recommend Secondary Planning Strategies be initiated for any of these lands at this time, in accordance with Policy S-2 and S-3 of the Regional Plan
- Requests to initiate additional secondary planning in potential growth areas must consider the implications to meet Regional Plan growth targets, the need for additional serviced land, the fiscal implications and in particular the ability of HRM and Halifax Water to meet the additional financial commitments imposed by growth.
- The Regional Plan strives to ensure there is a minimum 15 year supply of land that is available for serviced development.

HRM Staff relies upon the following:

- According to Statistics Canada census data, the number of households in HRM grew by 10,015 from 2006 to 2011 – an average of 2,003 per year.
- The Regional Plan targets approximately 50% of all residential growth, or approximately 1,000 dwelling units per year, to occur in the urban communities outside of the Regional Centre. An inventory of potentially developable lands within the urban communities, outside the Regional Centre, was undertaken in the fall of 2013. It was estimated that there was sufficient supply for at least 28 to 35 years based on a more conservative estimate of growth in urban communities of 1,200 households per year.
- Notwithstanding, Regional Council has initiated the planning process for the Port Wallace growth area and invested in oversizing a trunk sewer and completed a watershed study for the Sandy Lake growth area. Both of these areas could collectively provide an additional 15,000 dwelling units, or 12 years additional supply based on 1,200 new households per year.

- There is an abundance of land available for development on the fringes of the Urban Service Area, and it is critical that informed decisions are based on all the costs that will place a burden on property taxes.
- To permit development at this time on the Annapolis lands that are zoned Urban Reserve, the 2014 Regional Plan and the Halifax Mainland LUB will have to be amended to change the zone to Urban Settlement or another zone that will permit the development planned by Annapolis.

Annapolis Group and Susie Lake Developments dispute the reasons put forward for staff's recommendation not to proceed with secondary planning for their lands and state:

- that their lands can be developed without imposing any additional burden upon Halifax taxpayers as all necessary infrastructure will be built at the landowners' costs with the exception of HRM's contribution for roads built fronting lands owned by it (i.e. parkland acquired through this process) and major road infrastructure to the extent required to handle traffic generated by the users of the regional park and/or background traffic.
- Planning for the conceptual development of the Urban Reserve lands is required to occur at the same time as planning for the development of the Urban Settlement lands as the infrastructure for servicing the Urban Reserve lands will have to be built on the Urban Settlement lands and designed and sized accordingly. The phasing and timing of development of the Urban Reserve lands in accordance with the Regional MPS can be addressed in secondary planning.
- Setting the boundaries for the regional park will require an amendment to the Regional MPS and it is most efficient to fine tune the boundaries as secondary planning proceeds with adjacent development.
- HRM's wish to acquire their land for the regional park while not determining the boundary for the park has been the motive for delaying the approval of their lands for secondary planning. Annapolis Group and Susie Lake Developments take the position that failure by HRM either to set the regional park boundary or to permit secondary planning to proceed while it still intends to establish a regional park and acquire their lands is actionable.

#### APPRAISAL INFORMATION

##### *Susie Lake Developments*

- Susie Lake Developments did not submit an appraisal report, as their lands are almost entirely outside of the conceptual park boundary in Map 11 of the 2014 Regional Plan
- Assumed that any municipal parkland acquisition would likely be via the Subdivision By-law and parkland dedication provisions, with the possibility of some additional acquisition of land by HRM.
- The Altus appraisal report provided to HRM valued the entire Susie Lake holdings at [REDACTED]

##### *Annapolis Group*

- Annapolis Group provided a Master Valuation report of their lands, as of July 30, 2014, prepared by Turner Drake & Partners Ltd.

- The total land area for Annapolis within the Map 11 regional park boundary is 965 acres, of which 291 acres is zoned Urban Settlement and the remaining acreage is zoned Urban Reserve.
- Turner Drake adopted a Hypothetical Condition for the purposes of valuation, assuming development would be allowed to proceed in accordance with the master plan prepared by Summit Rock Developments Limited. Turner Drake employed the Subdivision approach.
- The total Market Value of the land as determined by Turner Drake was \$78 million. This was based on a land value per acre of \$80,829.00, applied equally to the entire acreage.
- Turner Drake determined that Annapolis' Overhead and Profit over the 20 year life of the project, if the entire property were used for the Regional Park, would equal \$41.3 million.
- The total was \$119.3 million.
- HRM retained Altus Group to prepare an appraisal of Annapolis' lands, as of February 21, 2015.
- Altus employed the Direct Comparison approach to estimate the market value of the property.
- Altus did not consider the Subdivision approach as there was no secondary planning strategy in place for the lands, and therefore the form and the timing of the development is highly uncertain.
- The total Market Value of the Annapolis lands as determined by Altus was \$12.7 million with an average unit value of \$13,070 per acre.
- Annapolis Group has indicated that should HRM accept the park boundaries proposed in the Development Plan, it would accept the amount of \$6 million, or similar value through a land swap. HRM would be responsible for constructing the roads through the parkland or sharing the costs of those portions of the road with parkland frontage.
- Annapolis Group has also indicated that as an alternative to receiving \$6million in compensation for its loss of lands to regional park, it is prepared accept compensation based upon the fair market value of these lands determined through arbitration. It is also prepared to negotiate the timing of the payment for the acquisition of these lands by HRM. Annapolis Group is prepared to adjust the boundaries of the regional park through the secondary planning process with its compensation for lands in excess of the 10 percent subdivision requirement required for regional park to be negotiated or set by arbitration of the fair market value of this land.
- Susie Lake Developments is prepared to sell to HRM portions of its lands additional to the 10 percent parkland requirement, if these lands are required for the regional park at a price to be agreed upon.

**Comments of the Parties Concerning HRM Park Staff's Map 3A and the Landowners' Development Plan**

The separate comments of HRM Park Staff and the Landowners on each of their own and other sides' boundaries follow.

### COMMENTS OF HRM PARK STAFF CONCERNING ITS MAP 3A

HRM Park Staff applied the Regional Park Criteria to the proposed BMBC Regional Park boundaries identified in HRM Map 3. The following is a list of positives, semi-positives and negatives arising out of that assessment, as well as additional comments from staff arising out of the facilitation process:

#### Positives

Moves the Regional Park boundary almost entirely within lands that are currently zoned Urban Reserve.

Fully achieves the regional park objective of protecting the old growth forest east of Fox Lake.

Partially achieves the regional park objective of providing regional public lands and lakes for nature based recreation. This is to be a public park providing for a wide spectrum of user abilities and interests.

Partially achieves the regional park objective of providing front country recreation nodes. These nodes are to provide areas for concentrated recreation activities and education as well as necessary support infrastructure (parking, washrooms, launches, etc).

Partially achieves the regional park objective of buildability: ensure areas for recreation are buildable without undue destruction of natural assets and undue costs.

Partially achieves the regional park objective of providing community parks. The goal is to provide community related facilities for the new community at Birch Cove Lakes (sportsfields, playgrounds).

Partially achieves the regional park objective of water quality. This objective is to protect the water quality of the following headwater lakes: Fox Lake, Ask Lake, Susie Lake, Charles Lake and Pond, Quarry Lake and Washmill.

Partially achieves the regional park objective of buffer wilderness protected areas. The objective is to provide a buffer from Development, from intensive recreation use and view planes from the front country and back country lands.

Partially achieves the regional park objective of park image. The objective is to contribute to the positive image at the regional level and within the Birch Cove Lakes Community.

Partially achieves the regional park objective of positive views from key locations. The key view areas are Blue Mountain, Quarry Lake Hill, Birch Cove Lakes Canoe Route and Back Country Protected Area Lakes.

Partially achieves the regional park objective of providing a network of accessible open space.

#### Semi-Positives

Minimally achieves the regional park objective of providing a linear trails system. This objective is to create a primary spine linear trail system that functions for nature based recreation and active transportation connecting neighbourhoods and communities and connecting to the larger regional system (Colta, Mainland North Linear Trail, Bedford West).

Minimally achieves the regional park objective of providing access. This objective is to provide an appropriate level and ease of public access and park presence while respecting the limitations of the *Wilderness Protection Act*. It is also to provide trailhead entrances and supports at entrances to back country areas.

Minimally achieves the regional park objective of providing a riparian buffer. This is an adequate undisturbed area adjacent to lakes and streams to maintain the ecosystem.

Minimally achieves the regional park objective of providing connectivity of natural areas, such as connecting lakes to the interior and being a stepping stone to natural areas within existing settlement areas to the east.

Negatives

The cost to acquire the land will be greater than if Regional Council adopts the Annapolis plan, as more of Annapolis' land is required for the Regional Park under HRM Map 3A.

## COMMENTS OF HRM PARK STAFF CONCERNING LANDOWNERS' DEVELOPMENT PLAN

HRM Park Staff applied the Regional Park Criteria to the proposed BMBC Regional Park boundaries identified in the Landowners' Development Plan. The following is a list of positives, semi-positives and negatives arising out of that assessment, as well as additional comments from staff arising out of the facilitation process:

### Positives

Moves the Regional Park boundary almost entirely within lands that are currently zoned Urban Reserve.

Partially achieves the regional park objective of protecting the old growth forest east of Fox Lake.

The cost to acquire the land will be less than if Regional Council adopts HRM Map 3A, as more of Annapolis' land is required for the Regional Park under HRM Map 3A.

### Semi-Positives

Minimally achieves the regional park objective of providing regional public lands and lakes for nature based recreation. This is to be a public park providing for a wide spectrum of user abilities and interests.

Minimally achieves the regional park objective of providing a linear trails system. This objective is to create a primary spine linear trail system that functions for nature based recreation and active transportation connecting neighbourhoods and communities and connecting to the larger regional system (Colta, Mainland North Linear Trail, Bedford West).

Minimally achieves the regional park objective of providing front country recreation nodes. These nodes are to provide areas for concentrated recreation activities and education as well as necessary support infrastructure (parking, washrooms, launches, etc).

Minimally achieves the regional park objective of providing community parks. The goal is to provide community related facilities for the new community at Birch Cove Lakes (sportsfields, playgrounds).

Minimally achieves the regional park objective of water quality. This objective is to protect the water quality of the following headwater lakes: Fox Lake, Ask Lake, Susie Lake, Charles Lake and Pond, Quarry Lake and Washmill.

Minimally achieves the regional park objective of providing a riparian buffer. This is an adequate undisturbed area adjacent to lakes and streams to maintain the ecosystem.

Minimally achieves the regional park objective of park image. The objective is to contribute to the positive image at the regional level and within the Birch Cove Lakes Community.

Minimally achieves the regional park objective of providing a network of accessible open space.

Negatives

Fails to achieve the regional park objective of providing access. This objective is to provide an appropriate level and ease of public access and park presence while respecting the limitations of the *Wilderness Protection Act*. It is also to provide trailhead entrances and supports at entrances to back country areas.

Fails to achieve the regional park objective of buildability: ensure areas for recreation are buildable without undue destruction of natural assets and undue costs.

Fails to achieve the regional park objective of buffer wilderness protected areas. The objective is to provide a buffer from Development, from intensive recreation use and view planes from the front country and back country lands.

Fails to achieve the regional park objective of providing connectivity of natural areas, such as connecting lakes to the interior and being a stepping stone to natural areas within existing settlement areas to the east.

Fails to achieve the regional park objective of positive views from key locations. The key view areas are Blue Mountain, Quarry Lake Hill, Birch Cove Lakes Canoe Route and Back Country Protected Area Lakes.

**COMMENTS OF ANNAPOLIS GROUP INC. AND SUSIE LAKE DEVELOPMENTS LIMITED CONCERNING  
MAP 3A PROPOSED BY HRM PARK STAFF**

- Proposal involves acquisition by HRM of 625 to 675 acres of lands of Annapolis Group Inc., an area three times that of Point Pleasant Park. In view of its estimated investment of \$30 million in infrastructure to open its lands to development, Annapolis Group considers that divesting itself of such a large parcel of its landholdings would render its remaining lands uneconomic to develop. In these circumstances, Annapolis Group Inc. would look for HRM to acquire its entire landholdings which it values at over \$120 million.
- Elimination of development of Annapolis Group's land would impose higher infrastructure development costs upon both Susie Lake Developments Limited and HRM as they will be unable to share costs of common infrastructure required for their development and the regional park.
- Limiting development in the vicinity of the park will reduce the number of users of both the regional park and the provincial wilderness park and will delay the opening of public access points to the park and to the Birch Cove Lakes. Instead of relying upon infrastructure and roads paid for by private development, HRM will have to consider if and when it can budget for the cost of such infrastructure on its own.
- HRM needs to decide as a matter of policy how much parkland it requires and is prepared to pay for, taking into account the proposed regional park is adjacent to a 3,242 acre wilderness park, an area approximately two-thirds of peninsular Halifax. This wilderness area has recently been augmented by an additional 1,100 acres of provincial Crown Land. See Site Location Plan Appendix V for a representation of the size of the parcels involved.
- Meeting regional park objectives and the setting of priorities within the objectives are subjective judgments. Map 3A does not, for example, extend the COLTA trail along Washmill Lake to Kearney and Charles Lakes even though the park study preceding the Regional MPS identified this as an objective. Similarly, the plan places priority upon restricting development within the Fox Lake watershed even though the watershed study concluded these lands could be developed without adversely affecting water quality. The plan reflected in Map 3A does not remedy the current adverse effect upon the water quality of the Birch Cove Lakes caused by storm water from development of the Lacewood and Bayer's Lake areas flowing into Susie Lake and Quarry Lake. Fox Lake also flows into Quarry Lake.
- Susie Lake shoreline water access points are not within the Regional Park Boundary.

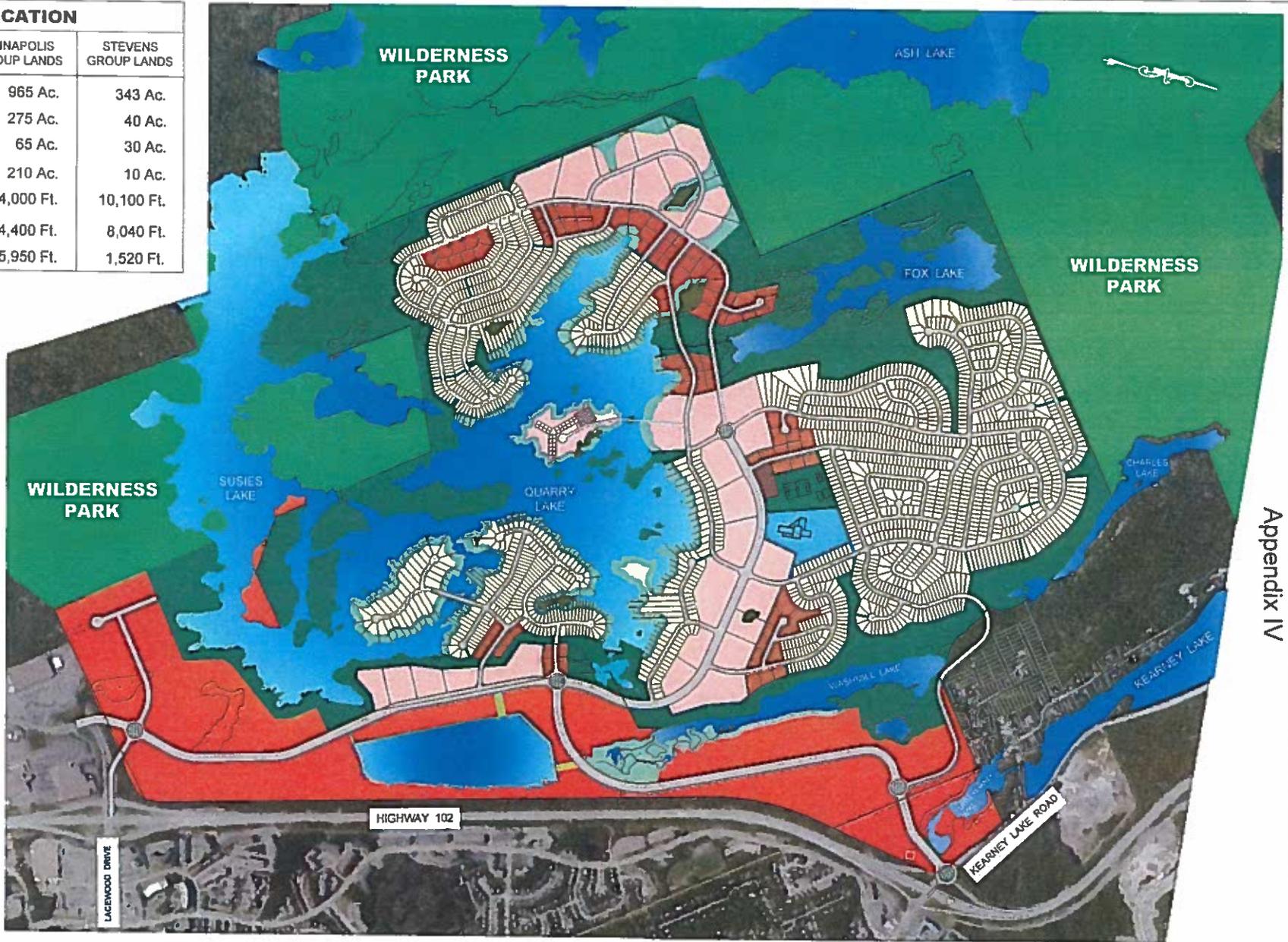
COMMENTS OF ANNAPOLIS GROUP INC. AND SUSIE LAKE DEVELOPMENTS LIMITED ON THEIR  
DEVELOPMENT PLAN

- Development will provide multiple points of public access to the proposed regional park and to Birch Cove Lakes at little public expense as roads and intersections are built by developers.
- It is buildable and affordable for HRM and will result in an accessible regional park being made available to the public sooner than the alternative.
- The Development Plan features 315 acres of parkland which results in 64,100 feet of shoreline of the Birch Cove Lakes in public ownership and all privately owned shoreline protected by a riparian buffer.
- The Development Plan provides the opportunity to address pollution of the Birch Cove Lakes by diverting contaminating storm water emanating from Clayton Park and Bayer's Lake and currently entering Susie Lake to a man-made lake for further treatment as part of the development of the lands of Susie Lake Developments .
- Development of the private lands will utilize existing public facilities (see plan Appendix VII) and will not require any additional investment by HRM apart from sharing road costs for streets fronting HRM owned property (i.e.parkland) or for conventional cost sharing of major road structures based upon projected road traffic generated by users of the regional park and/or background traffic.
- Development will generate park users and increase access routes (roads and pathways) and modes of access (car, transit, bike,walk, run) to the park.
- The Development Plan allows for the extension of the COLTA trail through the development along the sides of Washmill, Susie and Quarry Lakes to Kearney and Charles Lakes. It also preserves for public park use waterfront property at the dam which controls the flow out of Quarry Lake.
- Dedication of parkland upon completion of secondary planning will provide security that land for the regional park may be acquired and the regional park realized. Phasing of the development through secondary planning manages pace of development.
- Acceptance by HRM of the Development Plan as the basis for resolution of the regional park boundaries through a facilitated agreement will secure parkland for generations to come and amicably settle the regional park boundaries, an action it cannot delay indefinitely while not permitting the development of the lands.
- Susie Lake is within the Regional Park boundary.

**PARK DEDICATION**

|                      | ANNAPOLIS GROUP LANDS | STEVENS GROUP LANDS |
|----------------------|-----------------------|---------------------|
| TOTAL LAND           | 965 Ac.               | 343 Ac.             |
| TOTAL PARK           | 275 Ac.               | 40 Ac.              |
| REQUIRED PARK        | 65 Ac.                | 30 Ac.              |
| SURPLUS PARK         | 210 Ac.               | 10 Ac.              |
| PUBLIC SHORELINE     | 54,000 Ft.            | 10,100 Ft.          |
| PRIVATE SHORELINE    | 34,400 Ft.            | 8,040 Ft.           |
| PARK STREET FRONTAGE | 5,950 Ft.             | 1,520 Ft.           |

- Single Family
- Townhomes
- Multi Unit
- Institutional
- Community Commercial
- Riparian Buffer
- Park
- Wetlands
- Mixed Use
- Wilderness Park



Appendix IV



**DEVELOPMENT PLAN**  
**HIGHWAY 102 WEST CORRIDOR**

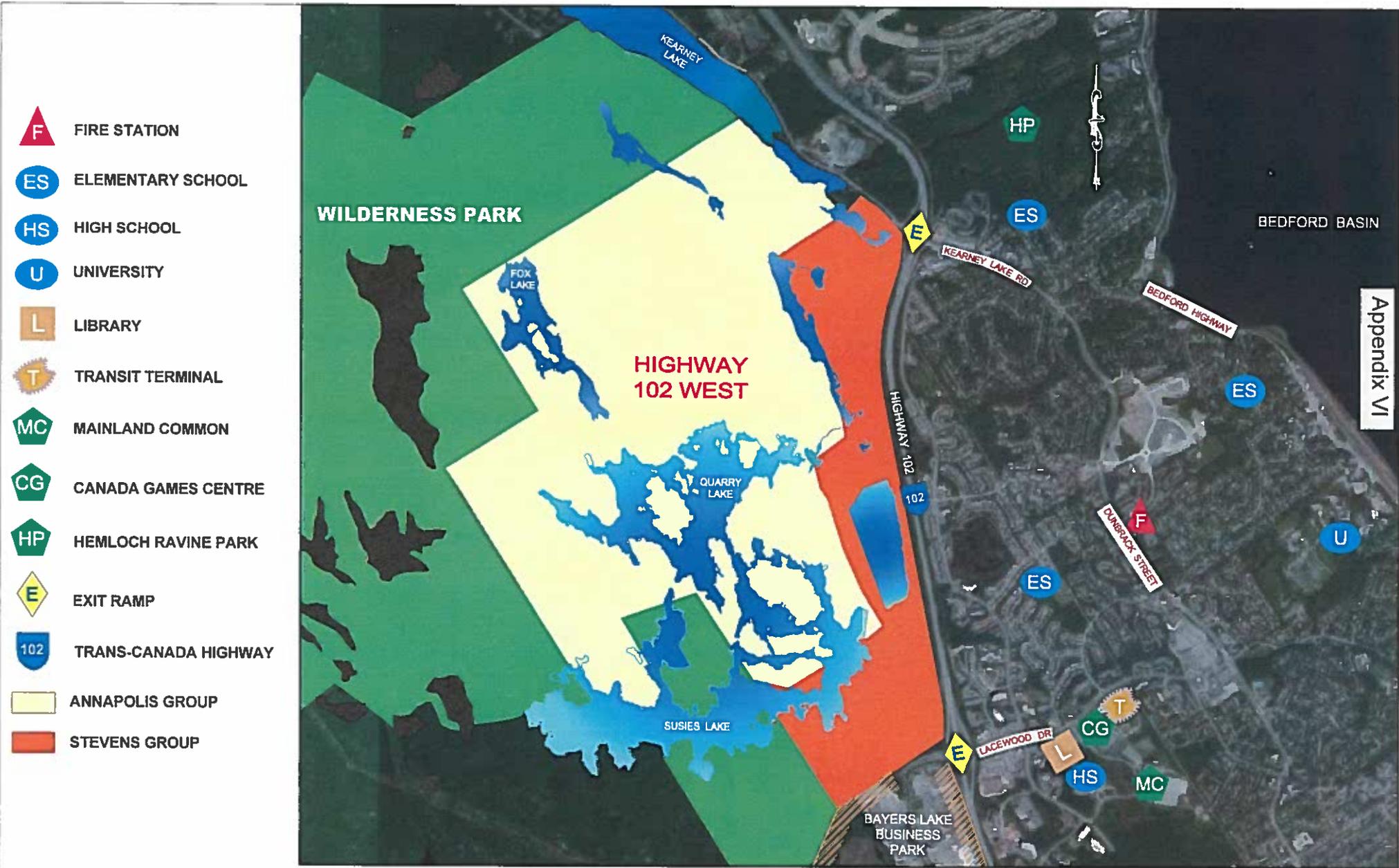


DECEMBER 10, 2015



## SITE LOCATION

### HIGHWAY 102 WEST CORRIDOR



**EXISTING PUBLIC FACILITIES**  
**HIGHWAY 102 WEST CORRIDOR**

