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Western Region Community Council
June 25, 2012

TO: Chair and Members of Western Region Community Council

SUBMITTED BY: 
Brad Anguish, Director, Community and Recreation Services

DATE: June 5, 2012

SUBJECT: **Case 17869 - Amendments to the Planning District 4 Land Use By-law to permit an Access Driveway for Wind Turbine Development on Lands off River Road in Terence Bay**

ORIGIN

On April 23, 2012 Western Region Community Council passed the following motion:

"MOVED by Councillor Lund, seconded by Councillor Adams that the Western Region Community Council request a staff report on amendments to the Planning District 4 Land Use By-Laws, and any/all other documents as required, for a parcel of land at River Road, Terence Bay, (PID #00384966) to enable provisions to allow a wind turbine as per approved criteria. MOTION PUT AND PASSED."

RECOMMENDATION

It is recommended that Western Region Community Council request that staff initiate the process to amend the Planning District 4 Land Use By-law to rezone a portion of provincial land (PID 40122427) from the (P-3) Conservation zone to the (RE) Resource zone to enable the use of an existing access driveway for wind turbine development on the lands of Mr. Bernard Deal (PID 00384966), Terence Bay.

BACKGROUND

In 2006, HRM undertook a region-wide policy initiative to establish a comprehensive strategy for wind turbine siting across the Municipality. Since 2008, Mr. Bernard Deal has been communicating with staff about his intentions to establish a large scale wind turbine development on his lands (PID 00384966) near River Road in Terence Bay, Prospect (Map 1). On October 18, 2012, Regional Council adopted a Wind Energy Strategy which applied various wind overlay zones across HRM, including Mr. Bernard's land to allow wind turbine development. However, the driveway required to access Mr. Bernard's property was not zoned appropriately to permit wind turbine development (Map 1). Due to the unique situation, Community Council requested at its April 23, 2012 meeting that a staff report be prepared to identify possible avenues for rezoning the access driveway to the Deal's property, to enable the wind turbine development.

Site Description

Mr. Deal's property, identified as PID 00384966, is a 100 acre parcel of land situated near River Road in Terence Bay (Map 2). The property is currently vacant and has no road frontage. Mr. Deal gains access to his property via a driveway across provincially owned land (PID 41022427) as shown on Map 1. Both properties are relatively remote. Currently, there are no residential buildings within 900 metres of the edge of the Deal property. However, there is a property zoned RA-3 (Residential A-3) with frontage on a public right-of-way and within 700 metres of the Deal property. The RA-3 (Residential A-3) Zone permits residential dwellings.

Designation and Zoning

Mr. Deal's property is designated Resource under the Planning District 4 Municipal Planning Strategy (MPS) (Map 1) and is zoned (RE) Resource on the zoning map. The provincially owned lands surrounding Mr. Deal's property, which include the access driveway, are designated Conservation and zoned (P-3) Conservation. However, both properties are located within the (RW-2) Rural Wind overlay zone on the Wind Energy Overlay Zoning Map (Map 3) which permits large, medium, and small wind turbines.

Existing Operation

In 2001, Mr. Deal applied for and received a development permit to operate a composting operation on his property. To gain access to the property, Mr. Deal received approval from the province to build a driveway over a crown road to his property (Map 1). Under the LUB, access driveways to composting facilities are permitted to cross P-3 zoned lands but not wind turbine developments. As a result, Mr. Deal was denied a development permit in 2011 when he applied to construct a wind turbine development on his property using the existing driveway. Despite the Province granting an easement to Mr. Deal allowing him to use the existing driveway, the permit refusal was based upon the zoning applied to the driveway which does not permit wind turbine development. As the driveway is accessory to the wind turbine development, it must be located in a zone that permits the development.

Proposal

Mr. Deal would like to utilize the existing access driveway on the abutting provincial property (PID 40122427) to permit him to develop a wind turbine development on his property which will

consist of up to 4 (or more) large utility scale wind turbines of approximately 120 metres (400 feet) in height and generating approximately 2 megawatts of power. As a result, it is anticipated that the wind turbine development on these lands will be required to undergo a Provincial Environmental Assessment. Mr. Deal has already received an easement from the Province for this use but requires rezoning approval to use the driveway for the purpose of constructing wind turbines on his lands (Map 3).

Wind Energy Strategy

The Regional Municipal Planning Strategy (RMPS) sets out policy for the siting of wind turbines throughout HRM (Attachment A). As part of the Strategy, wind energy overlay zones were created. In Planning District 4 two wind energy zones were applied:

- i) (R) Restricted zone which prohibits all wind turbines. This zone was applied consistently across HRM to lands which included provincially recognized Protected and designated Conservation lands; and,
- ii) (RW-2) Rural Wind zone which permits all scales of wind turbines subject to setback and separation distance requirements. This zone was applied to all remaining lands in the Plan Area, including certain provincially owned lands.

Within Planning District 4, a broader range of crown properties were identified and zoned as Conservation (P-3). Due to the importance placed upon protecting conservation lands within the Planning District 4 MPS, all P-3 zoned lands prohibit the siting of wind turbines in the same manner as the R Zone. Therefore, to determine whether or not wind turbine development is permitted on a property within Planning District 4, one must consult the Zoning Map, the Wind Energy Overlay Zoning Map, and the text of the LUB.

DISCUSSION

To receive a Development Permit for any particular land use, that use must be permitted by the property's zoning, including any access driveway to the property whether it is located on the same or on another property. For example, properties can be within the (RW-2) Rural Wind overlay zone but the general zoning applied to one of the properties could be P-3 which would prohibit the siting of wind turbines on the property. In Mr. Deal's case, his property is zoned for wind turbine development (RW-2) but the access driveway is zoned (P-3) Conservation, which prohibits such development.

To allow wind turbine development on Mr. Deal's property (PID 00384966 – see Map 4) a portion of the lands that contain the access driveway, owned by the Province (PID 00384966), must be rezoned from the (P-3) Conservation Zone to the (RE) Resource Zone. The province has indicated that they are supportive of the rezoning and the use of a portion of their lands as an access driveway to permit wind turbine development on Mr. Deal's property.

To resolve Mr. Deal's situation, two approaches were reviewed by staff as follows:

Regional Approach

Council could choose to send the matter to Regional Council to initiate the process to consider an MPS policy amendment that considers the issue faced by Mr. Deal on a region-wide basis. This could ultimately necessitate a review of the RMPS or the Planning District 4 MPS policies to consider wind turbine development on all (P-3) Conservation lands in Planning District 4. Given the amount of time Mr. Deal has pursued this proposal and the time required to amend either the RMPS or the Planning District 4 MPS, staff is of the opinion that Council should seek an alternative approach to address the situation.

Site Specific Approach

Based upon Mr. Deal's unique situation, Council could consider rezoning the access driveway to permit wind turbine development on his property. Within the Planning District 4 MPS, Policy CONS-8(c) allows for the consideration of a change in use to the (RE) Resource Zone by amendment to the LUB when the lands are to be utilized for resource development purposes (Attachment A). In effect, Council would be able to judge the merits of the application on a site specific basis in accordance with Policy IM-11 (Attachment A) without impacting the whole of (P-3) Conservation lands in Planning District 4.

As to the compatibility of wind turbines for resource development purposes, Council applied the (RW-2) Rural Wind overlay zone to the (RE) Resource Zone in October of 2011. This effectively established that large scale wind turbines are consistent with the (RE) Resource zone activities in Planning District 4 (Attachment B). Accordingly, staff feels that there is sufficient policy support for Council to initiate a planning process to consider a rezoning of these lands from the (P-3) Conservation Zone to (RE) Resource Zone with the intention of retaining the (RW-2) Rural Wind overlay zone on these lands.

Conclusion

Due to Mr. Deal's unique situation and that the MPS enables Council to consider rezoning of P-3 zoned lands to the RE Zone, staff recommends that Council initiate the planning process to rezone only the lands of the access driveway and to retain the existing (RW-2) Rural Wind Two overlay zone that currently applies to these lands.

BUDGET IMPLICATIONS

The costs to process this planning application can be accommodated within the approved 2012/13 operating budget for C310 Planning & Applications.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

The community engagement process is consistent with the intent of the HRM Community Engagement Strategy. Should Council initiate the process the level of community engagement is consultation, achieved through a Public Information Meeting. A public hearing would have to be held by Council before they can consider approval of any amendments.

ENVIRONMENTAL IMPLICATIONS

None identified.

ALTERNATIVES

1. Council could choose to direct staff to initiate the planning process to consider amending the Planning District 4 LUB to rezone a portion of PID 40122427 from the (P-3) Conservation Zone to the (RE) Resource Zone for the purposes of constructing wind turbines on Mr. Deal's property (Map 4). This is the staff recommendation.
2. Council could choose to recommend that the matter be sent to Regional Council to consider a review of RMPS or the Planning District 4 MPS policies to permit wind turbines development on (P-3) Conversation lands.
3. Council may choose not to initiate any planning process. However since there is MPS policy authority to consider the amendment as described in this report, this is not the staff recommendation.

ATTACHMENTS

Map 1	Generalized Future Land Use
Map 2	Land Use Zoning and Context
Map 3	Wind Energy Overlay Zoning
Map 4	Area to be Rezoned
Attachment A	Excerpts from the Regional Plan and the Planning District 4 MPS
Attachment B	Excerpts from the Planning District 4 Land Use By-law

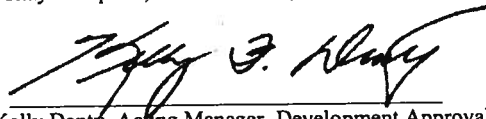
Community Council Report
Rezoning Driveway Access for Wind Turbines in Terence Bay

- 6 -

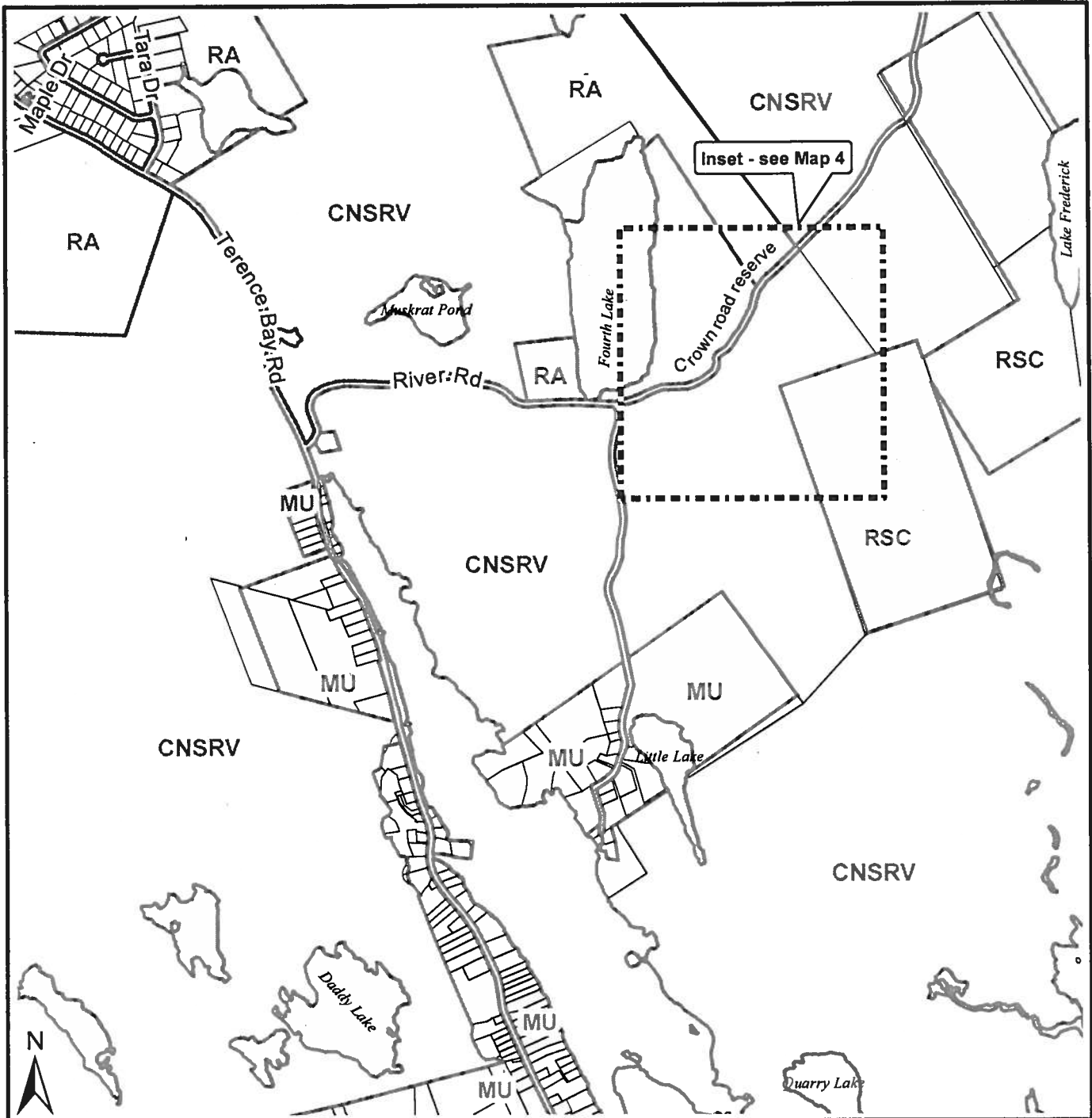
June 25, 2012

A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Shayne Vipond, Senior Planner, 490-4335



Report Approved by: Kelly Denty, Acting Manager, Development Approvals, 490-4800



Map 1 - Generalized Future Land Use

River Road area
Terence Bay



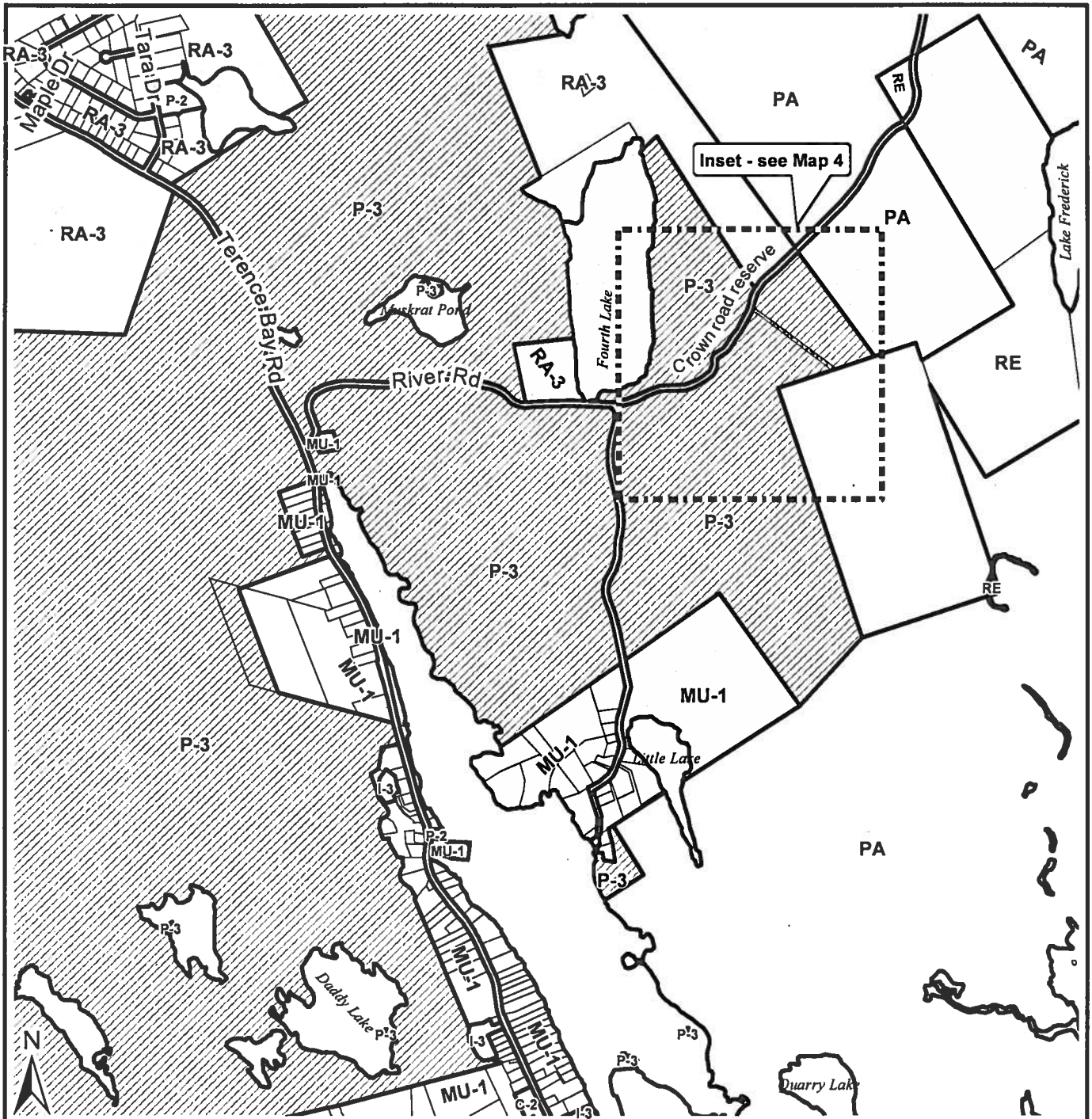
Designation

- RA Residential A
- MU Mixed Use
- RSC Resource
- CNSRV Conservation

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

HRM does not guarantee the accuracy of any representation on this plan

Planning District 4 (Prospect) Plan Area



Map 2 - Land Use Zoning and Context

River Road area
Terence Bay

 Wind turbines not permitted

Zone

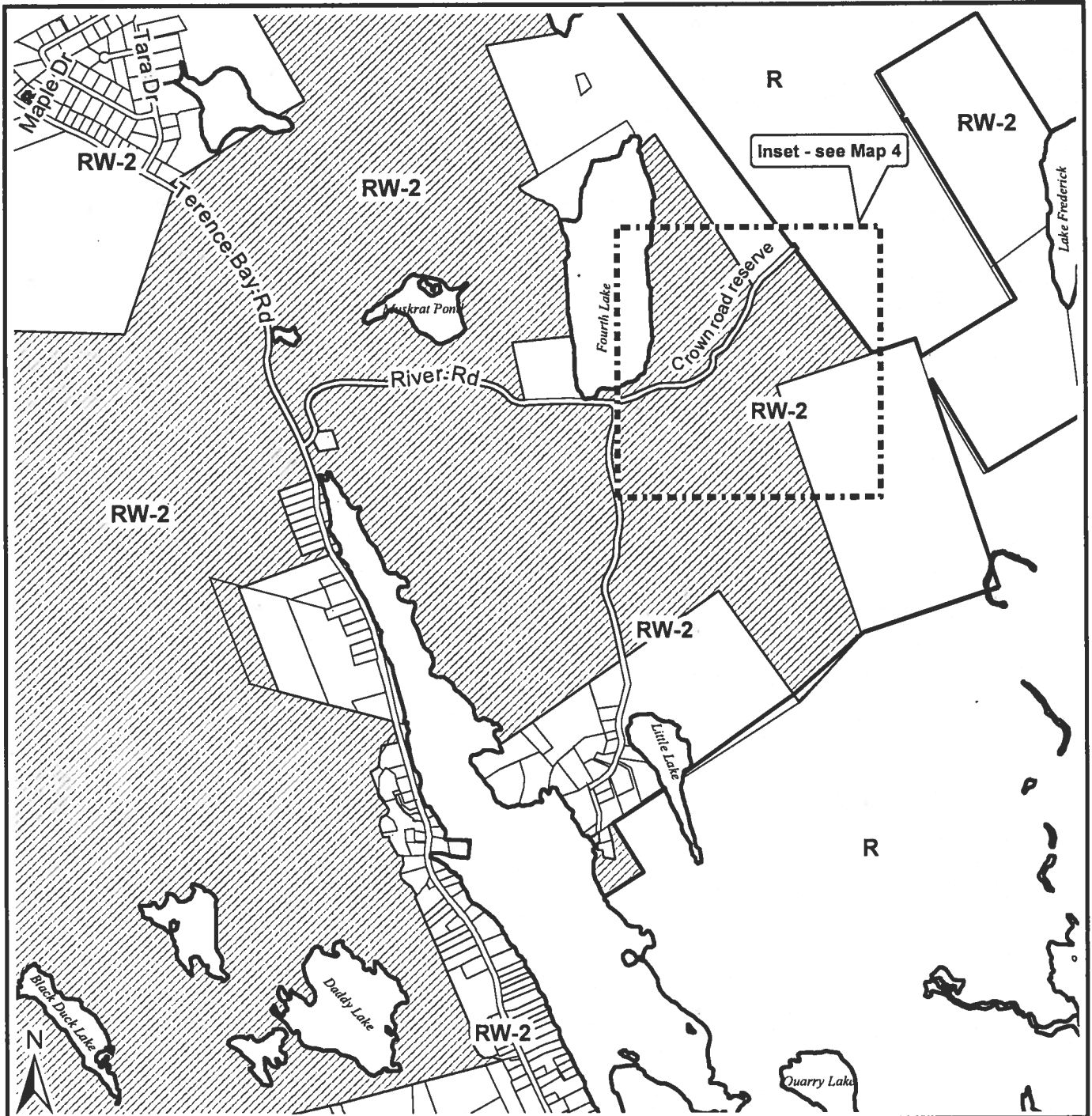
- RA-3 Residential A-3
- C-2 General Business
- I-3 Local Service
- MU-1 Mixed Use 1
- RE Resource
- P-2 Community Facility
- P-3 Conservation
- PA Protected Area

Planning District 4 (Prospect) Plan Area



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

HRM does not guarantee the accuracy of any representation on this plan



Map 3 - Wind Energy Zoning

River Road area
Terence Bay

 Wind turbines not permitted

Wind Energy Zone

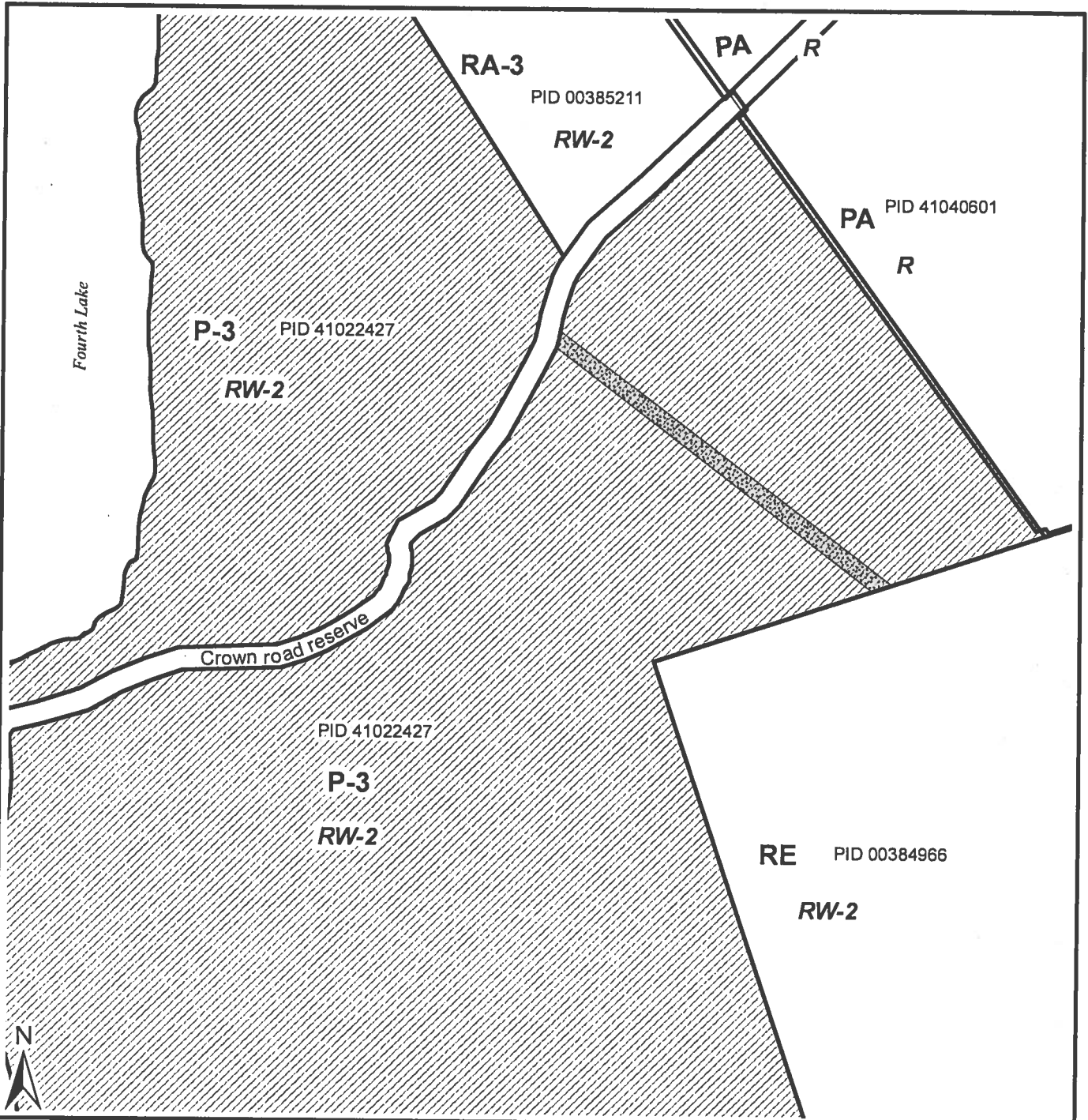
RW-2 Rural Wind
R Restricted

Planning District 4. (Prospect) Plan Area




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

HRM does not guarantee the accuracy of any representation on this plan



Map 4 - Area to be Rezoned

River Road area
Terence Bay

 Area proposed to be rezoned from P-3 (Conservation) to RE (Resource)

 Wind turbines not permitted

Planning District 4 (Prospect) Plan Area

Wind Energy Zone

RW-2 Rural Wind
R Restricted

Zone

RA-3 Residential A-3
RE Resource
P-3 Conservation
PA Protected Area



This map is an unofficial reproduction of a portion of the Zoning and Wind Energy Zoning Maps for the plan area indicated.

HRM does not guarantee the accuracy of any representation on this plan.

Attachment A -- Excerpts from the Regional Plan and the Planning District 4 MPS

Regional Municipal Planning Strategy

“7.6 Wind Energy

WIND ENERGY IN NOVA SCOTIA

Rural HRM

Unlike urban HRM where wind energy facilities are permitted only in selected locations, wind energy facilities in rural HRM have the potential to locate in many areas provided that the facility is not proposed to be sited in the Restriction (R) Zone. In addition, the wind energy facility must meet distance requirements and all Provincial and Federal regulations were applicable. Areas within the Restricted (R) Zone that have been identified as environmentally sensitive and are therefore excluded from wind energy facility development include: provincially protected wilderness areas, Regional and Provincial Parks and the Western Commons.

These machines can be highly visible and are considered controversial, generating conflicting opinion and strong points of view. The Municipality recognizes that a large portion of the public are predisposed to considering wind energy facilities in a negative light given the obtrusive nature of the technology. However the regulatory tools such as a Development Agreement and Site Plan approval, tools currently used extensively for other forms of development, cannot be utilized adequately to address issues of visual and sound impact mitigation. Accordingly wind energy facilities will be processed on an as of right basis.

Policy SU- 32

Within all Regional Plan Designations, HRM shall establish three overlay zones including an Urban Wind (UW-1) Zone, a Rural Wind (RE-2) Zone and a Restricted (R) Zone within the Land Use By-law to regulate wind energy facilities. These regulations will be implemented through the community land use by-laws. The Urban Wind Energy (UW-1) zone and the Rural Wind Energy (RE-2) Zone shall be applied to those areas where various categories of wind energy facilities shall be permitted in urban and rural areas. The Restricted (R) Wind Energy Zone shall be applied to the those areas where wind energy faculties shall be prohibited including Regional Parks, Conservation Areas, Protected Areas and the Western Commons and areas within Urban HRM not suitable for wind energy facilities.

Planning District 4 MPS Policies

CONSERVATION DESIGNATION

There are certain limited situations in which crown land transfers are carried out in order to improve crown land holdings in a particular area or where crown land is leased for resource development purposes. In order to accommodate such transfers which are in the public interest, provisions for the establishment of residential or mixed use or resource zoning on lands which are transferred into private ownership as part of a crown land exchange shall be considered. Provisions will also be made for the application of a resource zone to lands which have been leased for resource development purposes and for the application of a conservation or preservation zone to lands which are transferred into public ownership.

CONS-8 Notwithstanding Policy CONS-2, within the Conservation Designation, it shall be the intention of Council to consider the application of a residential, mixed use or resource zone, by amendment to the schedules or the land use by-law. In considering any amendment, Council shall have regard for the following:

- (a) that the residential or mixed use zone to be applied shall be the same zone as that of the nearest residentially or mixed use zoned property within the Plan Area;
- (b) that the resource zone to be applied does not abut any residential or mixed use zoned property within the Plan Area;
- (c) that the property to be rezoned is part of a crown land exchange within the Plan Area or has been leased by the province for resource development purposes;
- (d) the potential impact of the crown land transfer or lease on habitat and the overall integrity of the entire crown land holding; and
- (e) the provisions of Policy IM-11.

IMPLEMENTATION

IM-11 In considering development agreements or amendments to the land use bylaw, in addition to all other criteria as set out in various policies of this Planning Strategy, Council shall have appropriate regard to the following matters:

- (a) that the proposal is in conformity with the intent of this Planning Strategy and with the requirements of all other municipal by-laws and regulations;
- (b) that the proposal is not premature or inappropriate by reason of:
 - (i) the financial capability of the Municipality to absorb any costs relating to the development;
 - (ii) the adequacy of on-site sewerage and water services;
 - (iii) the proximity of the proposed development to schools, recreation or other community facilities and the capability of these services to absorb any additional demands;
 - (iv) the adequacy of road networks leading to or within the development; and

Rezoning Driveway Access for Wind Turbines in Terence Bay

- (v) the potential for damage to or for destruction of designated historic buildings and sites.
- (c) that controls are placed on the proposed development so as to reduce conflict with any adjacent or nearby land uses by reason of:
 - (i) type of use;
 - (ii) height, bulk and lot coverage of any proposed building;
 - (iii) traffic generation, access to and egress from the site, and parking;
 - (iv) open storage;
 - (v) signs; and
 - (vi) any other relevant matter of planning concern.
- (d) that the proposed development is suitable in terms of the steepness of grades, soil and geological conditions, locations of watercourses, marshes or bogs and susceptibility to flooding.
- (e) Within any designation, where a holding zone has been established pursuant to "Infrastructure Charges - Policy IC-6", Subdivision Approval shall be subject to the provisions of the Subdivision By-law respecting the maximum number of lots created per year, except in accordance with the development agreement provisions of the MGA and the "Infrastructure Charges" Policies of this MPS. (RC-July 2, 2002 / E-August 17, 2002)

Attachment B— Excerpts from the Planning District 4 Land Use By-law**4.33 WIND ENERGY FACILITIES (RC-Aug 16/11;E-Oct 29/11)****II ZONES****b) RURAL WIND ZONE (RW-2)**

- i) All Wind Energy Facilities are permitted in the Rural Wind Zone (RW-2).
- ii) All turbine towers shall have a minimum distance between turbines equal to the height of the tallest tower.
- iii) Turbines towers of Micro Facilities in the RW-2 Zone shall have the following set back requirements:
 - 1) A minimum distance of 3.0 times the tower height from any habitable building on an adjacent property;
 - 2) A minimum distance of 1.0 times the tower height from any adjacent property boundary.
- iv) Turbines towers of Small Facilities in the RW-2 Zone shall have the following set back requirements:
 - 1) A minimum distance of 180 metres (590 feet) from any habitable building on an adjacent property;
 - 2) A minimum distance of 1.0 times the tower height from any adjacent property boundary.
- v) Turbines towers of Medium Facilities in the RW-2 Zone shall have the following set back requirements:
 - 1) A minimum distance of 250 metres (820 feet) from any habitable building on an adjacent property;
 - 2) A minimum distance of 1.0 times the tower height from any adjacent property boundary.
- vi) Turbines towers of Large Facilities in the RW-2 zone shall have the following set back requirements:
 - 1) A minimum distance of 1000 metres (3281 feet) from any habitable building on an adjacent property;
 - 2) A minimum distance of 1.0 times the tower height from any adjacent property boundary.

c) RESTRICTED ZONE (R)

- i) Wind Energy Facilities shall not be permitted in the Restricted Zone.

V EXCEPTIONS

Notwithstanding Section II a) and II b) the setback requirements from any Wind Energy Facility to a property boundary may be waived where the adjoining property is part of and forms the same Wind Energy Facility. All other setback provisions shall apply.

- a) Wind Energy Facilities shall not be permitted in the following zones of the Planning Planning District 4 Land Use By-law:
 - i) RPK (Regional Park) Zone;

- ii) PA (Protected Area) Zone
- iii) P-3 (Conservation) Zone.

PART 29: RE (RESOURCE) ZONE

29.1 RE USES PERMITTED

No development permit shall be issued in any RE (Resource) Zone except for the following:

Single unit dwellings
Business uses in conjunction with permitted dwellings
Agricultural uses
Agricultural uses intensive
Aquaculture industrial uses
Forestry uses
Hunting and fishing lodges
Recreation uses
Composting operations (see section 4.29) (MC-February 26, 1996 / E-March 28, 1996)

29.2 RE ZONE REQUIREMENTS

In any RE Zone where uses are permitted in accordance with Section 29.1, no development permit shall be issued except in conformity with the following:

Minimum Lot Area	80,000 square feet (7432 m ²)
Minimum Frontage	200 feet (61.0 m)
Minimum Front or Flankage Yard	30 feet (9.1 m)
Minimum Rear Yard or Side Yard	25 feet (7.6 m)

29.3 OTHER REQUIREMENTS: RESIDENTIAL USES

In any RE Zone, where single unit dwellings are permitted, no dwelling unit shall be located closer than 50 feet from any side or rear lot line which abuts an existing resource operation.

29.4 OTHER REQUIREMENTS: BUSINESS USES

In any RE Zone, where business uses in conjunction with a dwelling are permitted, no more than fifty per cent of the gross floor area of any dwelling shall be devoted to any business use and in no case shall the gross floor area of any dwelling or accessory

building devoted to a business use exceed one thousand five hundred (1,500) square feet (134.4 m²)

29.5 OTHER REQUIREMENTS: AGRICULTURAL AND INTENSIVE AGRICULTURAL USES

In any RE Zone, where agricultural and intensive agricultural uses are permitted, no barn, stable, or other building intended for the keeping of more than fifty (50) domestic fowl or ten (10) other animals shall be located:

- (a) less than fifty (50) feet (15.2 m) from any side lot line;
- (b) less than one hundred (100) feet (30.5 m) from any dwelling or potable water supply except a dwelling or supply on the same lot or directly related to the agricultural use;
- (c) less than three hundred (300) feet (90.3 m) from any watercourse; or
- (d) less than one half (0.5) mile (0.8 km) from any residential or mixed use zone.

29.6 OTHER REQUIREMENTS: AQUACULTURE INDUSTRIAL USES

In any RE Zone, where aquaculture industrial uses are permitted, the following shall apply:

- (a) No hatchery, tank or processing operation which exceeds 3,000 square feet (278.7 m²) of gross floor area, shall be located:
 - (i) less than fifty (50) feet (15.2 m) from any side or rear lot line;
 - (ii) less than one hundred (100) feet (30.5 m) from any dwelling or potable water supply except a dwelling or supply on the same lot or directly related to the aquaculture industrial use; or
 - (iii) less than one half (0.5) miles (0.8 km) from any residential or mixed use zone.
- (b) The yard requirements for any aquaculture industrial use shall be waived for any yard which abuts the shoreline of a waterbody related to the aquaculture operation.

29.7 OTHER REQUIREMENTS: FORESTRY USES

In any RE Zone, where forestry uses are permitted, no sawmill or other industrial mill related to forestry which exceeds two thousand (2,000) square feet (185.8 m²) of gross floor area, shall be located:

- (a) less than fifty (50) feet (15.2 m) from any side or rear lot line;
- (b) less than one hundred (100) feet (30.5 m) from any dwelling except a dwelling located on the same lot or directly related to the forestry use;
- (c) less than three hundred (300) feet (90.3 m) from any watercourse; or
- (d) less than one half (0.5) mile (0.8 km) from any residential or mixed use zone.

PART 31: P-3 (CONSERVATION) ZONE

31.1 **P-3 USES PERMITTED**

No development permit shall be issued in any P-3 (Conservation) Zone except for the following:

Conservation Uses

Public parks

Trails

Historic sites and monuments

Aids to marine navigation

Existing hunting and fishing camps

Existing cemeteries