


Item No. 11.1.8
Halifax Regional Council
September 10, 2013

TO: Mayor Savage and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed

Jane Fraser, Acting Deputy Chief Administrative Officer

DATE: August 7, 2013

SUBJECT: **HRM Acquisition of a Portion of Hines Road & Caldwell Road, Eastern Passage**

ORIGIN

This report originates from staff.

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter, Chapter 39, Section 318 (3); no road, or allowance for a road, becomes a street until Regional Council formally accepts the road or allowance, or the road or allowance is vested in the Municipality according to law.

RECOMMENDATIONS

It is recommended that Halifax Regional Council;

- 1) Approve the acceptance of ownership of a portion of Hines Road and Caldwell Road, Eastern Passage, as shown as Parcel 00-3A-1 and Parcel 00-3A-2 on Attachment "A1" and "A2", respectively; and
- 2) Authorize the Mayor and Municipal Clerk to sign the Environmental Disclosure Agreement, as per Attachment "B" of this report.

BACKGROUND

Hines Road and Caldwell Road have existed for many years and provide a necessary link to the HRM street network. This road was once part of the public highway system prior to WWII; however, lands that contained sections of these roads were expropriated to construct runways at Shearwater in 1942 and again in 1960. This resulted in the realignment of the roads. However, when the roads were realigned they were not conveyed to the Province, nor were they transferred to HRM at the time of the Streets and Services Exchange. That said, the Province, and then HRM, maintained these sections of roads since their realignment.

DISCUSSION

Hines Road runs from Main Road (Eastern Passage) to its intersection with Caldwell Road. Caldwell Road runs from Shore Road (Eastern Passage) to Cole Harbour Road (Cole Harbour). The subject sections of road are those that go 'around' the Shearwater Airport.

In the late 1990's a developer was interested in creating a subdivision of lands they owned fronting Hines Road. A subdivision application was submitted and reviewed. At the time it was believed the road was maintained and owned by HRM. Final approval was pending a revised survey plan based on the review to that date. However, after a number of years of inactivity the applicant contacted HRM to advise that they were interested in proceeding with the installation of services. Staff requested a revised survey plan, and when the Developer's Surveyor was required to delineate the Hines Road right-of-way on a plan of survey, it was discovered that the Federal Government owned a portion of Hines Road/Caldwell Road.

Subsequent to these findings, HRM staff entered into discussions with representatives of the Federal Government. It was agreed that it would be in HRM's best interest to take ownership of this portion of Hines Road/Caldwell Road since it is a vital link to the road network and surrounding communities. It is believed that the intent was to have the Province accept ownership many years ago, since they maintained it prior to amalgamation; however, it appears the transfer was never finalized.

HRM has paved sections of Hines Road and Caldwell Road in the past; in order to pave the next section of Caldwell Road the ownership issue should be resolved. Therefore, staff recommends that Council accept the sections of Hines Road and Caldwell Road from DND as DND is willing to deed the subject roadways at a nominal cost of \$1.00.

BUDGET IMPLICATIONS

There are no budget implications with this recommendation.

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

Community Engagement was not deemed applicable as this report is recommending transfer of road ownership from one government level to another. HRM has maintained this portion of the road since amalgamation.

ENVIRONMENTAL IMPLICATIONS

Her Majesty's responsibility for Environmental Contamination is to ensure compliance with Canadian Council of Ministers of Environment (CCME) Guidelines that were in effect at the time of conveyance of the Lands. Should it be required in the future, Her Majesty agrees to carry out any required remedial work and comply with any directive or order issued by an Environmental official of the federal government, arising out of the presence of any Environmental Contaminant on the Lands, providing that such requirement for remedial work arises from the presence of an Environmental Contaminant which exceeds CCME guidelines was attribute to Her Majesty's occupancy and use of the Lands.

The Municipality and Her Majesty agree that the disposition of the Lands may proceed without any further environmental site assessment or site remediation being undertaken by either party. PWGSC and Defence Construction Canada (a Crown Corporation that provides contracting, construction contract management and related infrastructure services to the Department of National Defence (DND)) confirmed that no environmental investigations have been completed to date on the subject parcels nor are there any planned. Her Majesty warrants that, to the best of its knowledge, no Environmental Contaminants have been released into the environment or deposited, discharged, placed or disposed of at, on, or in the Lands.

The Purchaser agrees to accept the Lands in their environmental state as of the date of conveyance without recourse against Her Majesty.

Any remedial action applicable to the Lands, required as a result of Environmental Contamination caused by or resulting from the use, occupation or ownership of the Lands by the Municipality or an agent of the Municipality, shall be the responsibility of the Municipality.

An Environmental Disclosure Agreement (EDA) that makes reference to the fact that no environmental studies have been completed on the subject property and will include typical indemnity clauses and information pertinent to support the transaction, will be signed by both parties and form an addenda to the transfer documentation.

Upon the transfer of the lands, the Recipient will be subject to the provincial laws and regulatory scheme, including the Atlantic RBCA guidelines, with respect to any contamination of the lands and, accordingly, in the event that the Recipient is required to undertake assessments or to remediate the lands for contamination which occurred during the period of ownership of the lands by the Her Majesty, then Her Majesty, through the Minister of National Defence, agrees to indemnify the Recipient for all costs associated with the remediation, and the costs of any assessments necessary due to the contaminated state of the lands.

ALTERNATIVES

Council could decide not to accept ownership of the subject portions of Hines Road and Caldwell Road; however, this is not the recommendation as these sections of road are of significant importance to the HRM roadway system in this area.

ATTACHMENTS

Attachment "A1" – Plan Showing Parcel 00-3A-1
Attachment "A2" – Plan Showing Parcel 00-3A-2
Attachment "B" – Schedule 'B' - Environmental Disclosure Agreement

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

Report Prepared by: Tom Crouse, Acquisition & Disposal Manager, Real Estate & Land Management, P&I 490-5931
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Report Approved by: _____
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Report Approved by: _____
Jane Fraser, Director, Planning & Infrastructure 490-7166

Report Approved by: _____
Ken Reashor, P.Eng., Director, Transportation & Public Works 490-4855

ATTACHMENT "A1"
Hines Road & Caldwell Road, Eastern Passage
Portion of Public Works and Government Services
Canada Plan No. S-4187-3A

Hines Road Section Area = 14.98 acres

PARCEL 00-3
SEE PWGSC PLAN S-4187-3
P.I.D. NO. 41081225
Lands of
**CANADA LANDS COMPANY
CLC LIMITED**
book 7014, page 518

PARCEL 00-3-2
AREA = 78.7844 HECTARES±

PARCEL 00-3A-2
AREA = 8.62 HECTARES±

PARCEL 00-3-1
AREA = 70.3596 HECTARES±

PARCEL 00-3E
AREA = 9.3710 HECTARES±
SEE PWGSC PLAN S-4187-3
P.I.D. NO. 41081266
Lands of
**CANADA LANDS COMPANY
CLC LIMITED**
book 7014, page 518

PARCEL 00-3A
SEE PWGSC PLAN S-4187-3
P.I.D. NO. 41081241
Lands of
**CANADA LANDS COMPANY
CLC LIMITED**
book 7014, page 518

PARCEL 00-3A-1
AREA = 6.0639 HECTARES±

Lands of H.M. in right of CANADA
C.F.B. SHEARWATER (DND)
for Title information see R.O. plans 15280 and 15281, drawer 205
(PORTION OF P.I.D. NO. 41081274)

PARCEL 98-1
Lands of
H.M. in right of CANADA
(FISHERIES AND OCEANS
CANADIAN COAST GUARD)
for reference see Federal Transfer Document
between Ministers dated July 27, 2004
see PWGSC plan S-4068 dated October 16, 1998,
signed by Harold S. Lively, N.S.L.S.

PARCEL 00-3D
Lands of
**CANADA LANDS COMPANY
CLC LIMITED**
book 7014, page 518

P.I.D. NO. 40103798

P.I.D. NO. 370423

P.I.D. NO. 40103731
P.I.D. NO. 40103732
see plan by Robert A. Hill, N.S.L.S., dated December 8, 1976
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 371897

P.I.D. NO. 40104150

P.I.D. NO. 40104143

P.I.D. NO. 40093865

P.I.D. NO. 371850

P.I.D. NO. 372088
LOT A2
see plan by K.W. Robb, N.S.L.S., dated January 29, 1974
(R.O. plan no. 12848, drawer 173)

P.I.D. NO. 372089
BLOCK A3
see plan by K.W. Robb, N.S.L.S., dated January 29, 1974
(R.O. plan no. 12848, drawer 173)

P.I.D. NO. 40103749
PARCEL 1
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103750
PARCEL 2
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103751
PARCEL 3
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103752
PARCEL 4
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103753
PARCEL 5
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103754
PARCEL 6
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103755
PARCEL 7
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103756
PARCEL 8
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103757
PARCEL 9
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103758
PARCEL 10
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103759
PARCEL 11
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103760
PARCEL 12
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103761
PARCEL 13
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103762
PARCEL 14
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103763
PARCEL 15
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

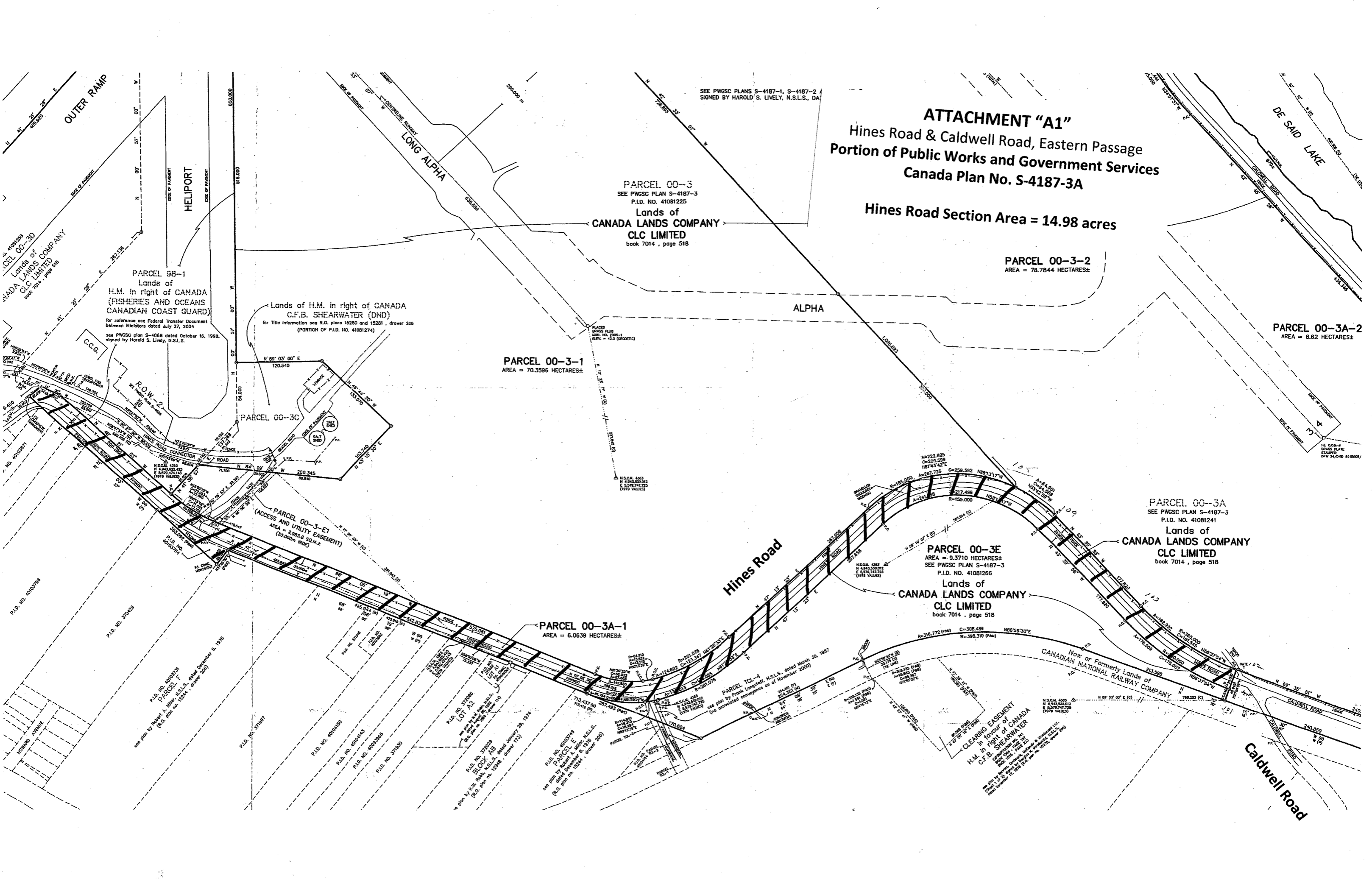
P.I.D. NO. 40103764
PARCEL 16
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

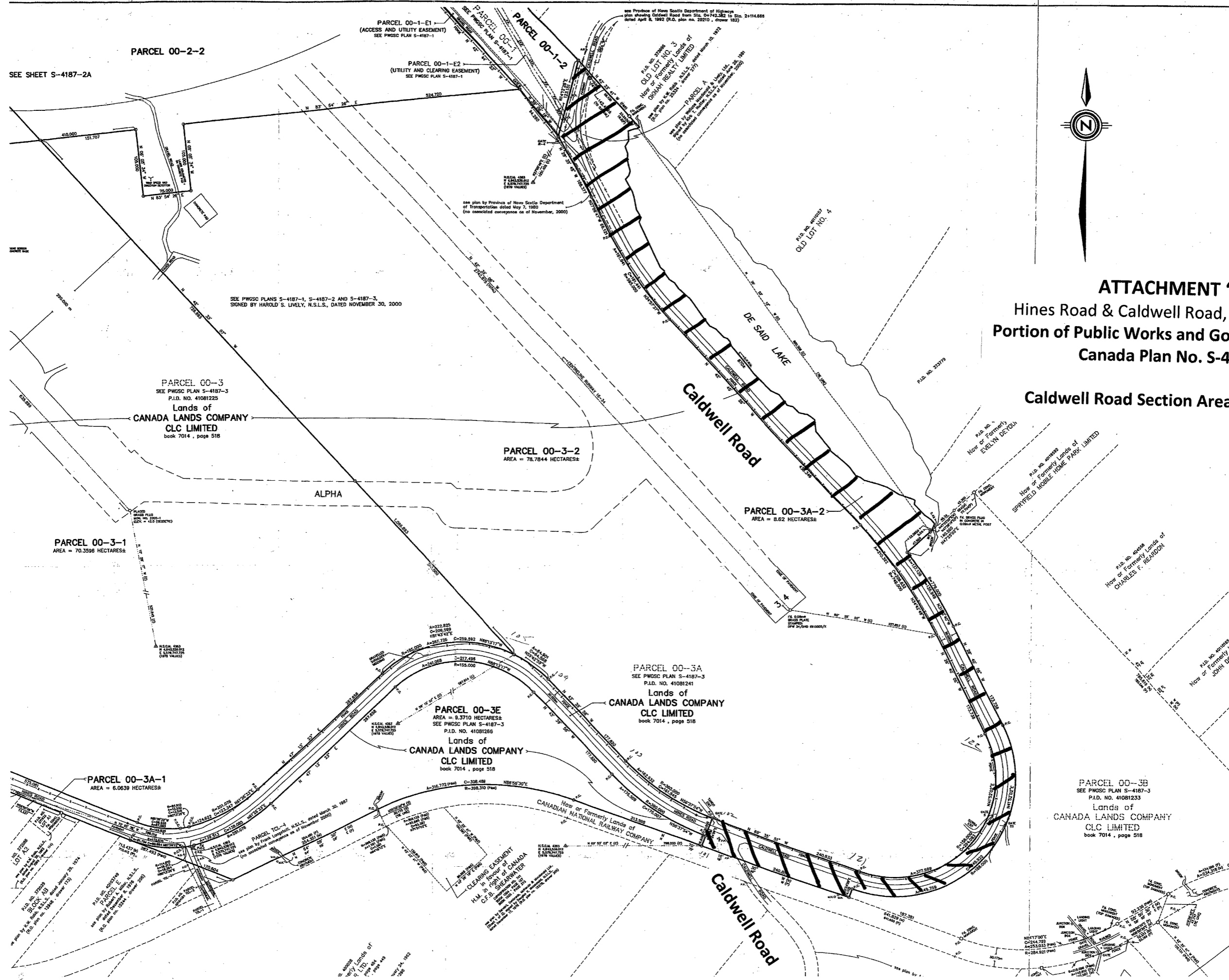
P.I.D. NO. 40103765
PARCEL 17
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103766
PARCEL 18
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103767
PARCEL 19
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)

P.I.D. NO. 40103768
PARCEL 20
see plan by Robert A. Hill, N.S.L.S., dated March 30, 1987
(R.O. plan no. 12844, drawer 205)





ATTACHMENT "A2"
 Hines Road & Caldwell Road, Eastern Passage
 Portion of Public Works and Government Services
 Canada Plan No. S-4187-3A

Caldwell Road Section Area = 21.29 acres

SCHEDULE "B"

ENVIRONMENTAL DISCLOSURE AGREEMENT

THIS AGREEMENT, made in triplicate this day ____ of _____, A.D. 2013.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of National Defence

(hereinafter referred to as "Her Majesty")

Party of the First Part

AND

HALIFAX REGIONAL MUNICIPALITY, a municipal body incorporated under the laws of the Province of Nova Scotia

(hereinafter referred to as "the Recipient")

Party of the Second Part

- I. WHEREAS Her Majesty has administration of real property comprised of land described as Parcel 00-3A-1 and Parcel 00-3A-2 on PWGSC Plan S-4187-3A, situate and located at Eastern Passage, Halifax Regional Municipality, Province of Nova Scotia, ("the Lands"), being more particularly described in Schedule "A" attached;
- II. AND WHEREAS Her Majesty has agreed to transfer the Lands to the Recipient.
- III. AND WHEREAS a site investigation and environmental assessment of the Lands has not been undertaken.
- IV. AND WHEREAS the Recipient has agreed to accept the Lands in the present condition.
- V. AND WHEREAS Her Majesty agrees to ensure that the Lands are to be sold or disposed of in a state compatible with all applicable Federal laws or legislation relating to the environment.

NOW THEREFORE the parties hereto agree as follows:

1. DEFINITIONS
 - a. "Applicable Federal laws and legislation" shall mean Federal environmental legislation, regulations, binding orders or rulings of Federal government agencies and any other applicable Federal laws in force at the time of this Agreement.

- b. "Environmental Contaminant" shall mean any physical, chemical, biological or radiological substance having an adverse effect on the environment, which has been released into the environment and whose concentration exceeds the greater of naturally occurring background levels or applicable regulations or guidelines.
- c. "ESA" means an Environmental Site Assessment and may include a review of previous uses of the Lands, site visits, soil sampling and laboratory testing of samples.
- d. "Agreement" shall mean this Environmental Disclosure Agreement.
- e. "Environment", as in the Canadian Environmental Protection Act, means the components of the earth and includes: (a) air, land and water; (b) all layers of the atmosphere; (c) all organic and inorganic matter and living organisms; and (d) the interacting natural systems that include components referred to in paragraph (a) and (c).

2. GENERAL

- a. There are to the knowledge of Her Majesty no orders or directions relation to environmental matters requiring any work, repairs, construction or capital expenditures with respect to the Lands and the use thereof, nor has Her Majesty received any notice thereof, except as may be disclosed in this Agreement.
- b. Her Majesty warrants that, to the best of its knowledge, no Environmental Contaminants, have been released into the environment, or deposited, discharged, placed or disposed of at, on or in the Lands.
- c. The Recipient represents and warrants that it and is aware that no ESA reports are available, and is aware of the present condition of the Lands and has exercised all due diligence with respect thereto in making this Agreement.

3. OBLIGATIONS

- a. The Recipient and Her Majesty agree that the disposition of the Lands may proceed without any further environmental site assessment or site remediation being undertaken by either party.
- b. The Recipient agrees to accept the Lands in their environmental state as of the date of conveyance without recourse against Her Majesty.
- c. If the Recipient proposes alternative uses for the Lands, it would be responsible to determine if further environmental site assessment or site remediation is warranted for the new use.

4. LIABILITY

- a. Following the date of conveyance of the Lands, the Recipient shall assume full responsibility for the Lands and for future maintenance, upkeep, repair or demolition on the Lands and for all liabilities in connection with or arising from ownership of the Lands, without any right of recourse whatsoever against Her Majesty, except as described in (d) herein.
- b. Her Majesty's responsibility for Environmental Contamination is to ensure compliance with Canadian Council of Ministers of Environment (CCME) Guidelines, in effect at the time of conveyance of the Lands. Should it be required in the future, Her Majesty agrees to carry out any required remedial work and comply with any directive or order issued by an Environmental official of the federal government, arising out of the presence of any Environmental Contaminant on the Lands provided that such requirement for remedial work arises from the presence of an Environmental Contaminant which exceeds CCME guidelines, is attributed to Her Majesty's occupancy and use of the Lands.
- c. Any remedial action applicable to the Lands, required as a result of Environmental Contamination caused by or resulting from the use, occupation or ownership of the Lands by the Recipient or an agent of the Recipient, shall be the responsibility of the Recipient.
- d. Upon the transfer of the lands, the Recipient will be subject to the provincial laws and regulatory scheme, including the Atlantic RBCA guidelines, with respect to any contamination of the lands, and accordingly, in the event that the Recipient is required to undertake assessments or to remediate the lands for contamination which occurred during the period of ownership of the lands by the Her Majesty, then Her Majesty, through the Minister of National Defence, agrees to indemnify the Recipient for all costs associated with the remediation, and the costs of any assessments necessary due to the contaminated state of the lands.

5. MISCELLANEOUS

- a. The representations and warranties contained herein shall not merge but shall survive the transfer of the Lands to the Recipient. The doctrine of merger shall not apply hereto and this Agreement shall remain in full force and effect notwithstanding the sealing, issuing or delivery of the conveyance document.
- b. The Parties shall not be in default or liable for any loss or damages resulting from delays in performance or from failure to perform or comply with the terms of this Agreement due to any causes beyond their reasonable control, including without limitation, acts of God or public enemy, riots, insurrections, war, accidents, fire, strikes, and labour difficulties, embargoes, or judicial orders.
- c. Any and all notices or other information to be given by one of the Parties to another shall be deemed sufficiently given when forwarded by prepaid registered or certified first class mail, or by facsimile transmission or hand delivery to one or both of the Parties at the following address:

If to Her Majesty the Queen:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the Minister of National Defence

(insert address)

If to the Recipient:

HALIFAX REGIONAL MUNICIPALITY

(insert address)

- d. This Agreement shall not be assigned or transferred by either party without consent of the other, which consent shall not be unreasonably withheld.
- e. The failure of any of the Parties to give notice to the other Party of a breach or non-fulfillment of any term, clause, provision or condition of this Agreement, shall not constitute a waiver thereof, nor shall the waiver of any breach or non-fulfillment of any term, clause, provision or condition of this agreement constitute a waiver of any breach or non-fulfillment of any term, clause, provision or condition of this Agreement;
- f. No member of the House of Commons shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

IN WITNESS WHEREOF this Agreement has been executed on behalf of HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of National Defence duly authorized by her the day and year first above written, and the Recipient has executed this Agreement on the ____ day of _____, 2013.

Her Majesty the Queen in Right of Canada, as represented by the Minister National Defence

Witness

Per:

Halifax Regional Municipality

Witness

Per:

Witness

Per: