



P.O. Box 1749  
Halifax, Nova Scotia  
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**Item No. 11.1.5**  
**Halifax Regional Council**  
**September 17, 2013**

**TO:** Mayor Savage and Members of Halifax Regional Council

**SUBMITTED BY:**

Original signed by

A handwritten signature in blue ink, appearing to be "R. Butts", written over a horizontal line.

Richard Butts, Chief Administrative Officer

Original Signed by

A handwritten signature in blue ink, appearing to be "M. Labrecque", written over a horizontal line.

Mike Labrecque, Deputy Chief Administrative Officer

**DATE:** July 8, 2013

**SUBJECT:** **Negotiate Boundaries for the Blue Mountain Birch Cove Lakes  
Regional Park in relation to the Highway 102 West Corridor**

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**ORIGIN**

November 16, 2010, Regional Council, Item 12.1.

**LEGISLATIVE AUTHORITY**

HRM Charter: Sections 235 (Content of a Land Use By-Law) and 237 (Future Public Use).

**RECOMMENDATION**

It is recommended that Halifax Regional Council:

1. Accept the Terms of Reference (Attachment 1) 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 this report; and
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.

## **BACKGROUND**

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 was presented to Regional Council for acceptance. The staff report indicated that in accordance with the November 16, 2010, Council motion, details of a proposed negotiation process will be brought back to Council in a separate report. In recent discussions, representatives of the affected landowners have advised staff that they remain committed to proceeding to negotiate through this process.

The lands for the Birch Cove Blue Mountain lands have also been identified in the Regional Plan as a potential regional park. A concept plan of the proposed boundaries for the Blue Mountain - Birch Cove Lakes Park, is presented on Map 13 of the Regional Plan (Attachment 2). The Regional Plan states:

*“It is the intention, 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 lands held by the property owners, comprised of Annapolis Group Inc., Gateway Materials Limited, Westridge Developments Limited, and the Sisters of Charity (“the property owners”), fall under both the Urban Settlement and Urban Reserve Designations under HRM's Regional Plan. The lands in Urban Settlement (89 hectares) are listed in the Plan as one of six major growth areas intended for development within the remaining 20 years of the Regional Plan.

Development could only proceed after a community planning strategy has been adopted by Regional Council. The lands in the Urban Reserve Designation (480 hectares) encompass one of seven areas listed in the Plan as Urban Reserve and are intended for development beyond the time frame of the plan.

The property owners are interested in advancing its land holdings to the secondary planning stage and have indicated a desire to now enter into joint planning and land negotiations with HRM respecting its parkland interests. The property owners have indicated a willingness to

consider the sale of lands to HRM and/or the dedication of specific parkland through the secondary planning process.

## **DISCUSSION**

Staff from Planning and Infrastructure and Legal Services has met with the property owners representatives on the potential of reaching an agreement on specific lands that are designated on Map 13 in the Regional Plan. Both parties are willing to move forward with formalized discussions using an independent facilitator.

The process for selecting the independent facilitator will be a joint one where each party puts forward two potential names and both parties come to consensus. Ideally, the facilitator will be from the Maritime Provinces.

Under the terms of reference (see attachment 1) the role of the independent facilitator will be 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 report will also indicate the methodology and approach used to determine the value of the land.

In order to ensure open dialogue between the parties, it is recommended that all information that may be deemed confidential as per Article 3 of the terms of reference remain confidential. Council discussion and updates would be held in camera as per Section 19 of the Charter.

## **FINANCIAL IMPLICATIONS**

It is anticipated that the cost of procuring an independent facilitator will be approximately \$50,000. This cost will be shared 50/50 with the developers. Funding is available in Planning and Infrastructure operating account W700-6399.

Negotiate Boundaries for the  
Blue Mountain Birch Cove Lakes  
Regional Park in relation to the Highway 102 West Corridor  
**Council Report**

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**COMMUNITY ENGAGEMENT**

Public input will be sought on the uses of the park and the interface between the park and the developed lands. Once the proposed park boundaries have been determined public, feedback will be sought.

If an agreement can be reached and Regional Council direct staff to initiate a Secondary Planning Process, the normal public consultation process shall be followed.

**ENVIRONMENTAL IMPLICATIONS**

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

**ALTERNATIVES**

Regional Council could amend the terms of reference as presented.

Regional Council could reject the terms of reference and direct staff to cease discussions with the developers' representatives.

**ATTACHMENTS**

- 1) Draft Terms of Reference Independent Facilitator
- 2) Map 13

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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:

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Report Approved by:

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Jane Fraser, Director of Planning and Infrastructure, 490-7166

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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.

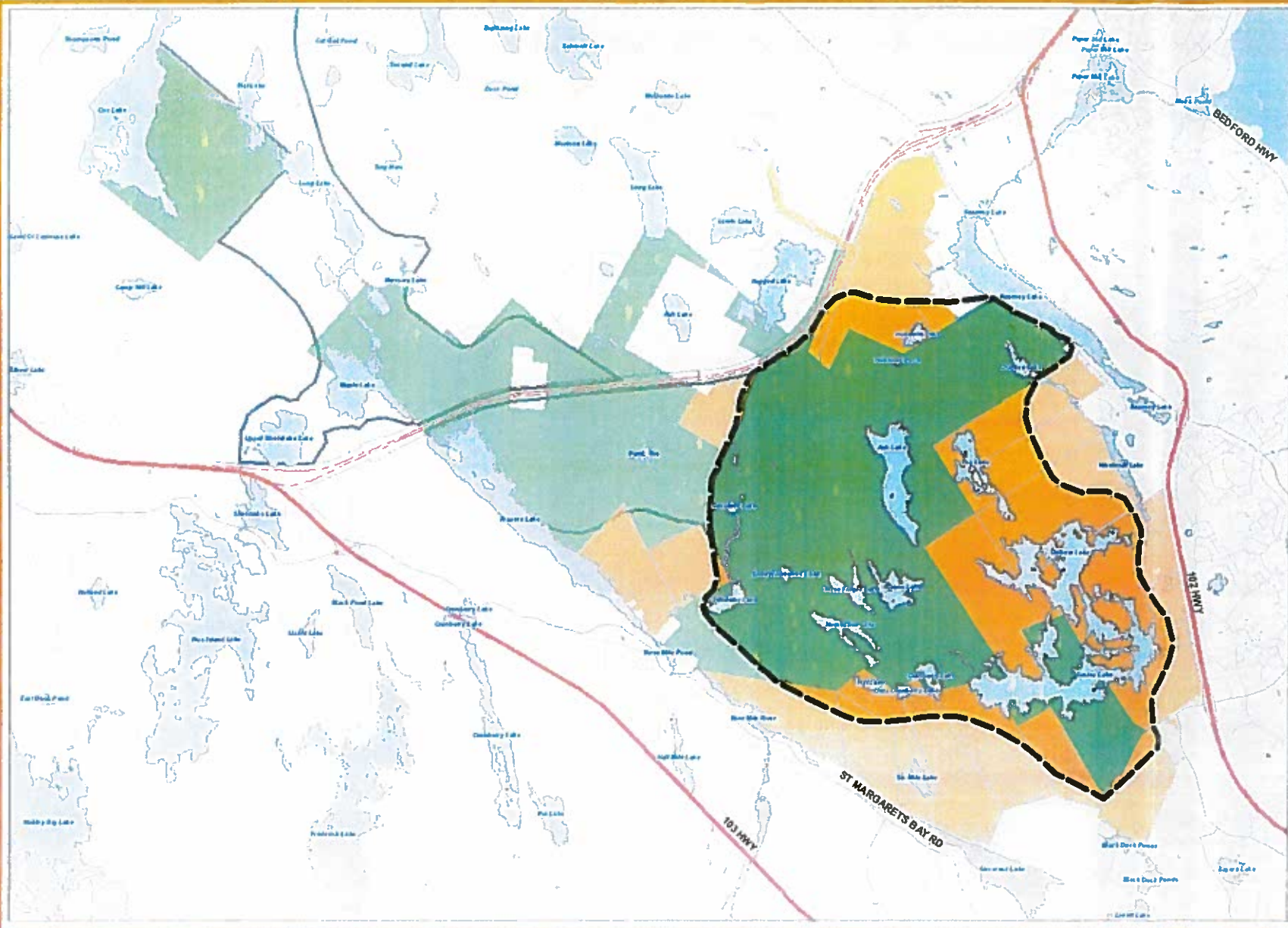


# Map 13

## Blue Mountain - Birch Cove Lakes Conceptual Park Area

### Legend

-  Park Boundary 14.5 Sq Km
-  Public Land - 9.27 Sq Km (64%)
-  Private Land - 5.25 Sq Km (36%)
-  Proposed HWY 113



**HALIFAX**  
REGIONAL MUNICIPALITY

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.

Notes: This map document is a vision to be implemented over the life of the Regional Plan, through various tools, subject to financial ability and community input.