

Form 4.02A

2017

Court Administration

MAR 22 2017

Halifax, N.S.

Hfx. No. 460474

SUPREME COURT OF NOVA SCOTIA

Between:

ANNAPOLIS GROUP INC.

PLAINTIFF

and

HALIFAX REGIONAL MUNICIPALITY

DEFENDANT

**NOTICE OF ACTION
Amended: March 22, 2017**

To: Halifax Regional Municipality
c/o Office of the Municipal Clerk
City Hall
1841 Argyle Street, Main Floor
Halifax NS B3J 3A5

Action has been started against you

The Plaintiff takes action against you.

The Plaintiff started the action by filing this notice with the court on the date certified by the Prothonotary.

The Plaintiff claims the relief described in the attached Amended Statement of Claim. The claim is based on the grounds stated in the Amended Statement of Claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada

- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the Plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under \$100,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the Plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary 1815 Upper Water Street, Halifax, Nova Scotia B3J 1S7 (telephone # 902- 424-4900)

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The Plaintiff designates the following address:

Neil Finkelstein / Eric Block
 Brandon Kain / Paul Davis
 McCarthy Tétrault LLP
 Suite 5300, TD Bank Tower
 66 Wellington Street West
 Toronto, ON M5K 1 E6

Documents delivered to this address are considered received by the Plaintiff on delivery.

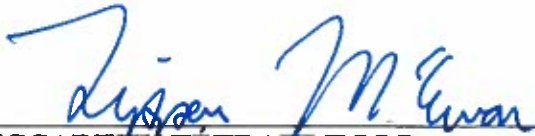
Further contact information is available from the Prothonotary.

Proposed place of trial

The Plaintiff proposes that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature


Signed March 22, 2017


for **MCCARTHY TETRAULT LLP**
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Christopher W. Madill

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**Counsel for the Plaintiff,
Annapolis Group Inc.**

Prothonotary's certificate

I certify that this Amended Notice of Action, including the attached Amended Statement of Claim, was filed with the Court on March 22, 2017.


Prothonotary

JESSICA BOUTILIER
Deputy Prothonotary

Form 4.02B**STATEMENT OF CLAIM**
Amended: March 22, 2017**Overview**

1. By statute, the Halifax Regional Municipality (“HRM”) cannot take private property without paying just compensation. And yet it has *de facto* but effectively, and intentionally, expropriated lands belonging to Annapolis Group Inc. (“Annapolis”) for use as a public park. In doing so, HRM has breached sections 65 and 237 of the *Halifax Regional Municipality Charter* (the “*Charter*”) and sections 6 and 24 of the *Expropriation Act* (the “*Expropriation Act*”), and committed the torts of *de facto* expropriation (taking) without compensation and abuse of public office. HRM is liable for damages as a result. As well, HRM has unjustly enriched itself at Annapolis’ expense and is liable for restitution.

2. While the *Charter* gives HRM the authority to acquire private lands for public use, it also provides that HRM “shall, within one year of the effective date of the zoning, acquire the land” (section 237(2)). HRM has expressly refused to engage in the statutory zoning to avoid its obligation to compensate Annapolis fairly for the taking of its property. Instead, HRM has prevented Annapolis from making *any* use of its lands, and has thus effectively acquired those lands for use as a *de facto* park for nothing.

3. HRM has denied Annapolis natural justice and has demonstrated bias against Annapolis.

4. HRM and its representatives have abused their public offices by acting for the purpose of harming Annapolis. They have acted in bad faith and discriminated against

Annapolis by preferring development of other owners' lands and HRM's own lands. HRM did so with the knowledge that such conduct would harm Annapolis. Through its intentional conduct, HRM has caused Annapolis to suffer damages.

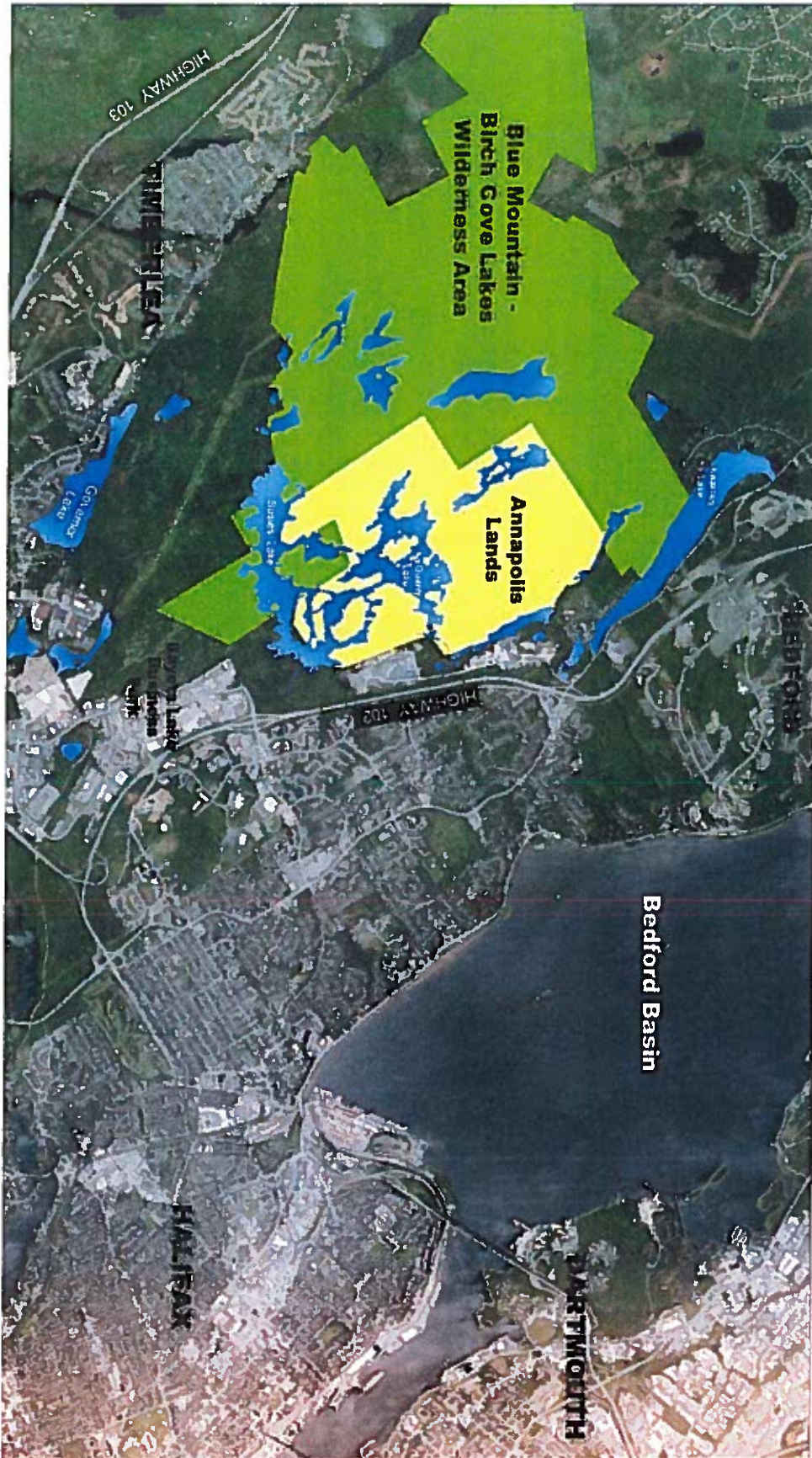
5. HRM is directly and vicariously liable for the breach of statute, torts and other wrongdoing pleaded herein.

The Parties and Background

6. Annapolis is a corporation organized under the laws of the Province of Nova Scotia, with registered offices located at 380 Bedford Highway, Halifax, Province of Nova Scotia. Among other lands, Annapolis owns 965 acres west of peninsular Halifax, in the following location: east of the Blue Mountain – Birch Cove Lakes Wilderness Area, west of Highway 102, north of Bayers Lake and south of Kearney Lake (the “Annapolis Lands”). The Annapolis Lands contain a number of lakes, including Quarry and Susie Lakes, which are man-made by dams initially built by previous owners of the Annapolis Lands, but maintained and upgraded by Annapolis at considerable expense.

7. Annapolis and its predecessor companies have held the bulk of the Annapolis Lands since 1956, when it acquired Moirs Limited, which began assembling the lands in 1903.

8. The Annapolis Lands are shown in relation to greater Halifax in the following map:



9. In 1982, the former City of Halifax applied to the Board of Commissioners of Public Utilities (the “**Board**”) to annex, among other areas, the Annapolis Lands. In submitting its application, the City “submitted that it was the most logical provider of services for the area, [and] that [it] should have control of such servicing for it affects the capital budgeting process of the City and the rate [at] which development should come on stream.” The Board agreed with the City that the City would provide services for the area. The Board approved annexation on the basis “that any development [in the area that included the Annapolis Lands] would result in a much greater community of interest relationship of the residents with the City [of Halifax] than with” outlying areas. Development of the Annapolis Lands was contemplated in the future.

10. After annexation, the City of Halifax Municipal Development Plan designated the Annapolis Lands for future serviced urban development.

11. In 1994, Annapolis and the City of Halifax shared the cost of upsizing a sewer through the Wedgewood Ravine area to facilitate future development of the Annapolis Lands.

12. In October 1995, Porter Dillon, an engineering, planning and environmental science firm retained by the City of Halifax, released a study of the broader area that included the Annapolis Lands (the “**Porter Dillon Report**”). The study concluded:

... the study area contains few features that, based on the study criteria developed in conjunction with the City, substantially restrict development. Close to 80% of the Primary Study Area [which included the Annapolis Lands] can accommodate low, medium and high density residential development and large scale commercial and industrial development. [Emphasis added.]

13. The Annapolis Lands became subject to the authority of HRM as the City of Halifax's successor upon amalgamation in 1996. HRM is a regional municipality continued pursuant to the *Charter*.

14. On July 16, 1996, HRM Council accepted the Porter Dillon Report as a guide for future planning and development of the area.

15. Serviced development has therefore been the intended use of the Annapolis Lands since at least 1982. Since at least 1995, environmental and servicing studies have consistently concluded that there are minimal constraints to development of the Annapolis Lands. There are no other reasonable uses of the Annapolis Lands.

The Regional Planning Strategy Designates a Park

HRM Adopts the 2006 Regional Planning Strategy

16. In 2006, HRM adopted a Regional Planning Strategy (the "**2006 RPS**"). The 2006 RPS designated the Annapolis Lands in two ways.

17. First, a portion of the Annapolis Lands was designated "Urban Settlement":

The primary intention of the Urban Settlement Designation is to define those areas where urban forms of development will occur throughout the next 25 years. The designation encompasses both developed and undeveloped lands and includes the following six sites 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.
18. The portion of the Annapolis Lands designated “Urban Settlement” is within the Highway 102 west corridor, which is item 6 in the list of urban growth areas above.
19. Second, the 2006 RPS designated the remaining portion of the Annapolis Lands “Urban Reserve”:

The primary intent of the Urban Reserve Designation is to ensure there is a continuous supply of land that can be serviced with central (municipal wastewater and water distribution) services beyond the 25 year time horizon of this Plan. The Urban Settlement Designation identifies those lands which HRM intends to service within the next 25 years. The Urban Reserve Designation focuses on those lands abutting the Urban Settlement Designation which could be serviced beyond the next 25 years to ensure the Municipality has a long-term supply of serviceable lands.

20. The Halifax Mainland Land Use By-law zoned the areas in accordance with the 2006 RPS – and continues to zone them in the same manner up to the present. Zoning allows for residential uses, but only if: (a) residences are built on existing roads, and (b) a private on-site sewage disposal system and well are provided on the lot. None of the requisite infrastructure is in place on the Annapolis Lands, and thus HRM’s authorization for secondary planning is required to develop the Annapolis Lands.

21. Although it designated the Annapolis Lands for development, the 2006 RPS included a map in one of its appendices (“**Map 13**”). Map 13 showed a regional park encompassing a broad area including approximately 765 acres of the Annapolis Lands. HRM thus showed its intention early on to take the Annapolis Lands for a park. While HRM then purported to negotiate with Annapolis for the next 10 years to move forward

with settling the park boundaries and consideration of the Annapolis Lands for secondary planning approval, HRM did so in bad faith as indicated herein and, at its Council meeting on September 6, 2016, reverted to its position that the Annapolis Lands must be reserved for a park.

22. The legend to 2006 RPS Map 13 described the park as follows:

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 Regional Park is for Human Uses, not Ecological Protection

23. The conceptual park boundaries in Map 13 were derived from the 2006 report regarding the park by Environmental Design Management (“EDM”). EDM was retained by HRM during the process leading up to the 2006 RPS (the “**2006 EDM Report**”). The 2006 EDM Report commented on the area included in the park, including the Annapolis Lands:

- The various landscape features described in the suitability models of the Blue Mountain Birch Cove Lakes landscape, while special to many visitors, do not rank as outstanding at a regional or provincial level of assessment.
- Known significant, unique, or rare individual landscape elements within the Study Area suggest the property should receive greater attention. No individual element identified would greatly diminish the value of the park if it were not included. This suggests that the ideal configuration for the Park is somewhat flexible and can respond to site and community issues as the Park is delineated over time. [Emphasis added.]

24. The 2006 EDM Report contemplated that the regional park would be used by members of the public for outdoor activities and not as an ecological reserve:

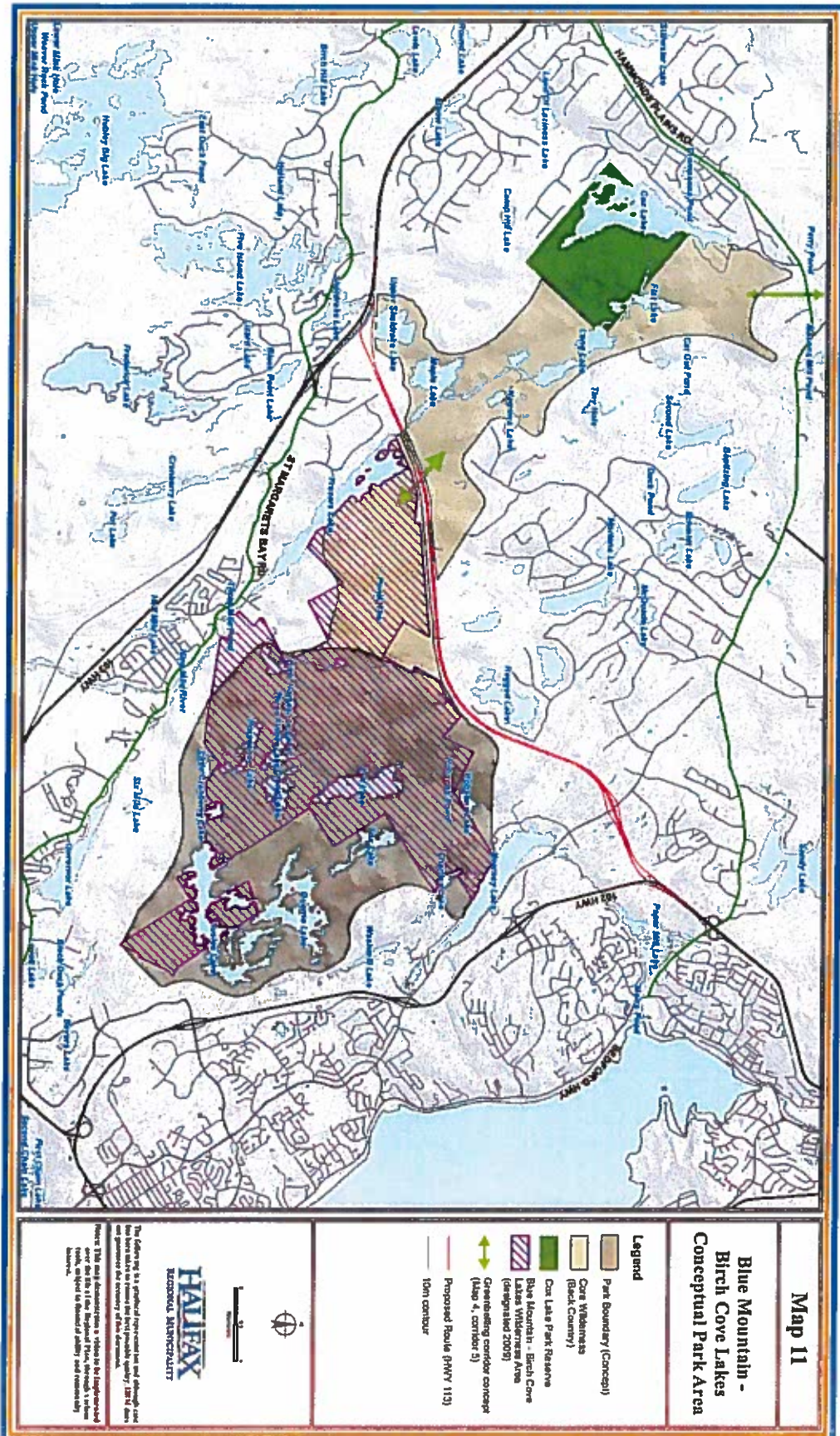
- The proposed Blue Mountain / Birch Cove Lakes Regional Park is not intended as an ecological reserve. Its recommended role is primarily as a human-use park in which the “natural environment” is preserved for human use. Landscape conservation will be undertaken in conjunction with trails and areas for swimming, skating, canoeing and other recreational activities.

HRM Adopts the 2014 Regional Planning Strategy

25. In October 2014, HRM adopted a new Regional Planning Strategy (the “**2014 RPS**”). The 2014 RPS designates the Annapolis Lands in the same manner as the 2006 RPS, and it continues to identify the Urban Settlement portion of the Annapolis Lands as a growth area. The 2014 RPS also adopts the same conceptual boundaries for the park as Map 13 in a new Map 11, with an identical comment in the map’s legend.

26. Map 11 also includes the Blue Mountain-Birch Cove Lakes Wilderness Area (the “**Wilderness Area**”), which the Province of Nova Scotia designated in 2009 and 2015 pursuant to the *Wilderness Areas Protection Act*, S.N.S. 1998, c. 27. The Wilderness Area is a protected zone comprised of over 4000 acres of Crown land.

27. Map 11 showing the Blue Mountain – Birch Cove Lakes Conceptual Park Area is as follows:



28. The 2014 RPS describes the park for which HRM is using the Annapolis Lands as follows:

Lands within the Blue Mountain-Birch Cove Lakes Park are both privately and publically [sic] owned and a study has been completed to determine the appropriate boundaries for the park. A conceptual geographic area for the park is shown on Map 11. 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. [Emphasis added.]

29. The 2014 RPS therefore effectively designates the vast majority (765 of the 965 acres of the Annapolis Lands, or 80%) of the Annapolis Lands as a future park. At the same time, it purported to set aside part of the same Annapolis Lands for serviced development within the life of the 2014 RPS.

The Legislation Requires HRM to Expropriate Lands Set Aside for Public Use

30. It is central to this case that HRM *must* expropriate lands which it zones for public use. Specifically, section 237 of the *Charter* requires HRM to acquire lands zoned for future public use within one year:

Future Public Use

237. (1) The Council may zone privately owned land for future public use other than transportation reserves if the by-law provides for an alternative zone on the land, consistent with the municipal planning strategy.

(2) Where privately owned land is zoned for future public use, the Municipality shall, within one year of the effective date of the zoning, acquire the land or the alternative zone comes into effect. [Emphasis added.]

31. Section 65 of the *Charter* requires HRM to effect that acquisition by expropriating the land pursuant to the *Expropriation Act*:

65. (1) Where the Council considers it necessary to acquire real property, including real property outside the Municipality, for a purpose for which it may spend money, the Council may expropriate the real property, but this power to expropriate does not authorize the Municipality to expropriate property of another municipality.

...

(3) The Expropriation Act applies to expropriation proceedings by the Municipality. [Emphasis added.]

32. Section 6 of the *Expropriation Act* requires HRM, an expropriating authority, to follow a prescribed process for taking the Annapolis Lands without the consent of the owner, Annapolis, and section 24 requires that it compensate Annapolis in doing so.

33. HRM staff conceded in a report submitted to HRM Council in October 2011 that the Annapolis Lands were not zoned as a park in the 2006 RPS because, had that been done, HRM would have been forced to pay for the Annapolis Lands pursuant to sections 65 and 237 of the *Charter*:

The privately-owned lands within the proposed boundary of the park are designated and zoned “Urban Reserve” or “Urban Settlement”. The reason the privately-owned lands were not zoned “Regional Park” at the time of the adoption of the Regional Plan was because, as mandated by provincial planning legislation, HRM would have been required to purchase the subject lands within a one year time frame. [Emphasis added.]

34. Thus, in order to preserve the Annapolis Lands for use as a park, but to avoid having to pay Annapolis for that land as required by subsection 237(2) of the *Charter*, HRM has, for the wrongful purpose of *de facto* expropriation, expressly refused to follow the statutory process to expropriate and pay for the Annapolis Lands.

HRM has Demonstrated Bias against Annapolis

35. HRM has demonstrated bias against Annapolis through its conduct in respect of development of other land under its authority, and in particular, has discriminated in favour of Clayton Developments Ltd. (“Clayton”), its own land holdings and other private owners. Some examples of HRM’s discrimination are detailed below.

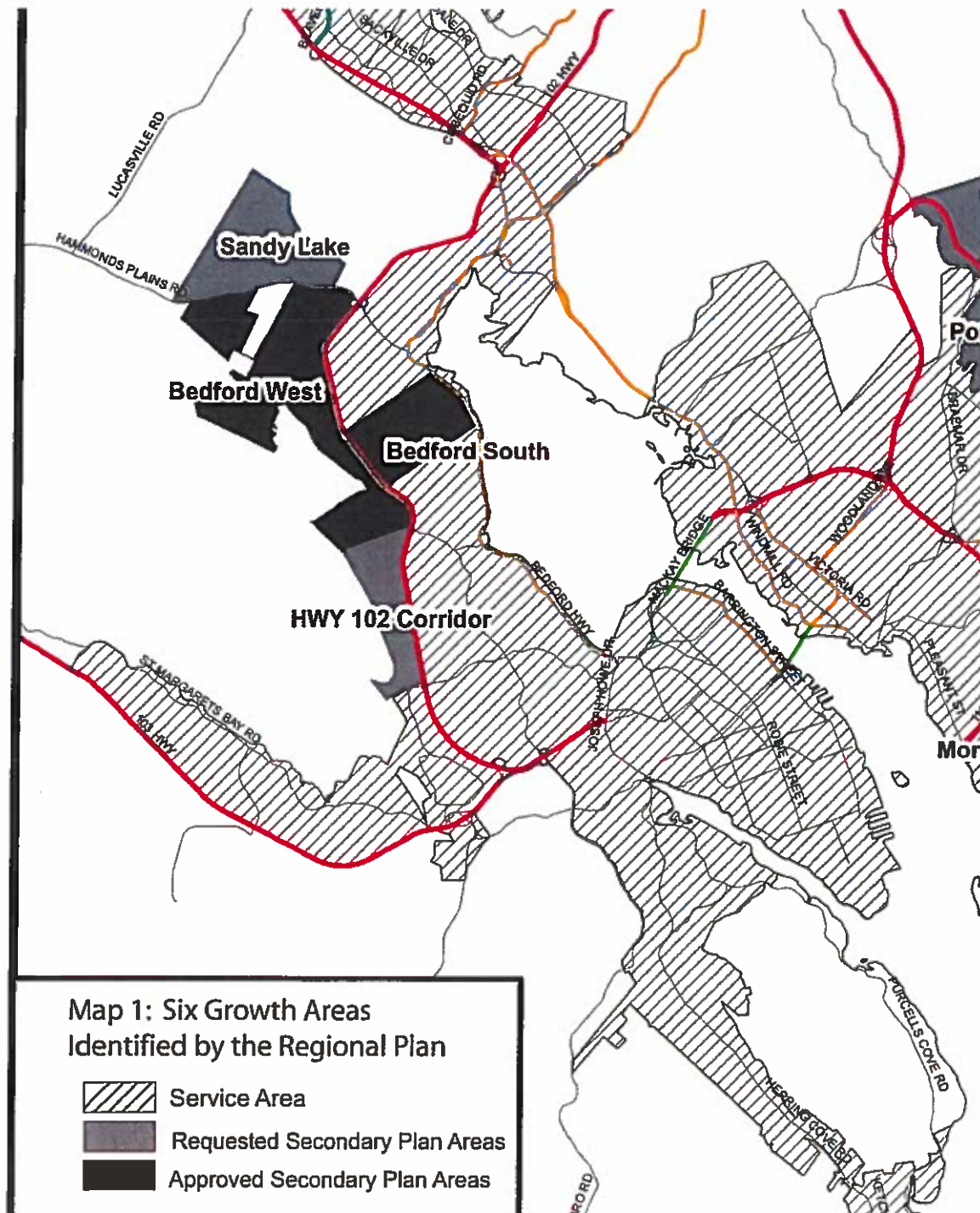
HRM Favours Clayton’s Developments in Bedford

36. Among its other holdings in HRM, Annapolis formerly held lands in Bedford West.

37. In the early 2000s, Annapolis applied to HRM to develop its land holdings in Bedford West. Despite detailed development plans consistent with the applicable requirements, HRM did not authorize secondary planning for those lands for several years. Only in 2006 – when Annapolis agreed to sell its Bedford West lands to a company owned by Cresco Developments Ltd., which Annapolis later learned had partnered with Clayton to develop Bedford West – did HRM finally authorize secondary planning, with no material changes to the development plan by Annapolis.

38. Also in the early 2000s, Clayton was seeking to develop land holdings in Bedford South, a suburban area just to the northeast of the Annapolis Lands across Highway 102 abutting the Bedford Basin. Bedford South is adjacent to both Bedford West and to the Annapolis Lands. The following map, which is taken from an HRM staff report submitted to HRM Council in November 2010, shows Bedford West and Bedford South

in relation to the Annapolis Lands (which are part of the lands identified as the Highway 102 Corridor):



39. Clayton acquired its holdings in Bedford South from a group of private owners who had been unable to obtain authorization for secondary planning from HRM.

40. Clayton's Bedford South lands required more costly infrastructure investment by HRM than the Bedford West lands required. HRM nevertheless approved development of Clayton's Bedford South lands, despite the greater cost to HRM, more quickly than Bedford West when it was owned by Annapolis.

41. For the Bedford South development, HRM established a Capital Cost Contribution arrangement. In such an arrangement, the municipality, here HRM, provides the initial capital outlay to construct the infrastructure necessary to support a development. The municipality recovers the costs by recovering a small amount from the developer as each parcel in the subject area is developed.

42. There were two significant problems with the Capital Cost Contribution arrangement for Bedford South. First, HRM significantly underestimated the costs of the infrastructure to be built. Second, HRM compounded its error when it failed to include a mechanism to require the private owners, including Clayton, to contribute additional funds if HRM's estimate proved inaccurate.

43. Annapolis advised HRM before HRM finalized the arrangement for Bedford South that the estimates were too low and that HRM should include a mechanism to require the private owners, including Clayton, to share infrastructure costs incurred in excess of the (understated) estimates.

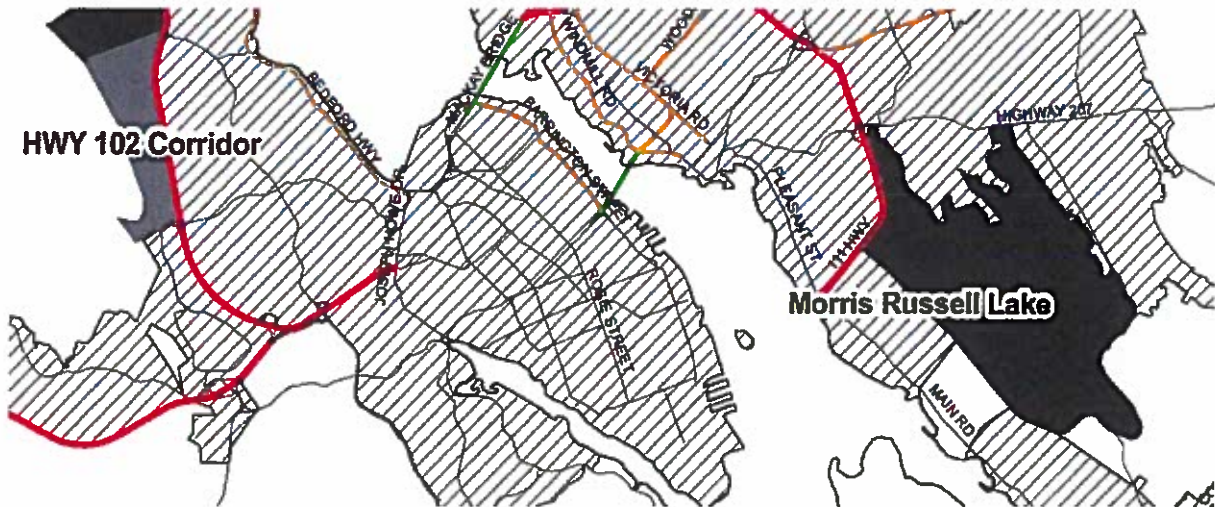
44. HRM ignored Annapolis' warning and proceeded with the proposed arrangement in any event. The result was as Annapolis (and others) predicted: HRM incurred substantial infrastructure costs in excess of its estimates which effectively subsidized development of private owners' holdings, including Clayton's, in Bedford South. As a result of the uneconomical arrangement HRM made, HRM became financially interested in ensuring that the private owners' holdings, including Clayton's, in Bedford South developed as quickly as possible in order to obtain capital contributions from the development to offset HRM's capital outlay, much of which was irrecoverable.

45. In addition to HRM's uneconomical Capital Cost Contribution arrangement for Bedford South, HRM subsequently established an uneconomical Capital Cost Contribution arrangement to subsidize development of Bedford West once Clayton had purchased lands in that area. Annapolis advised HRM of Annapolis' concern that substantial financial commitments on HRM's part would prevent other developments, including that of the Annapolis Lands, from going forward. HRM also relied on unrealistic projections as to the pace of development of Bedford West. As a result of the arrangement, HRM became and continues to be financially interested in ensuring Bedford West develops as quickly as possible.

46. As a result of HRM's agreements in respect of Bedford South and Bedford West, which benefitted private land owners, including, most particularly, Clayton, HRM has an interest in preventing competing adjacent developments, including, most particularly, the Annapolis Lands.

HRM Favours Clayton's Morris-Russell Lake Development

47. In the 2000s, Clayton also held lands in the area of Dartmouth commonly known as Morris-Russell Lake that Clayton sought to develop. Those lands are shown in the following map:



48. As with Clayton's lands in Bedford, HRM established an uneconomical Capital Cost Contribution arrangement in respect of Morris-Russell Lake, which both underestimated the infrastructure costs associated with the development and did not include a mechanism to share costs in excess of the estimate with private owners, including most importantly Clayton.

49. In setting the Capital Cost Contribution arrangement for Morris-Russell Lake, HRM purported to anticipate receiving capital cost contributions from the development of parcels of lands owned by the Department of National Defence, even though HRM had no assurance that those lands would ever be developed and there was no reasonable prospect of such development. Indeed, despite formally relying on the proceeds of those lands in the arrangement, HRM failed to include in the arrangement a costly connector

roadway that would have been required to develop the Department of National Defence lands, as well as adjacent privately-owned lands in the growth area which were not owned by Clayton. As a result, Clayton received the benefit of smaller contributions due to a larger area of land included in the arrangement without having to incur the cost of the infrastructure required to develop those same lands. Effectively, HRM subsidized the construction of a costly highway interchange to open a small area of Clayton's lands for development in Morris-Russell Lake.

Clayton Employs HRM Staff as Senior Executives

50. Former HRM staff have become officers and senior executives of Clayton. With former HRM staff who were involved in land development and land use in the employ of Clayton, HRM has continued to prefer Clayton's interests over those of Annapolis. Annapolis expressed its concerns about these matters to HRM, including during the Facilitation process described below.

51. A competitor's employment of former HRM staff contributes to HRM's bias and discrimination against Annapolis. Of the six areas identified for development in the 2006 RPS listed at paragraph 17 herein, HRM has approved secondary planning for only those areas in which Clayton holds an interest.

HRM Favours Development of its Own Lands within the Proposed Park Boundaries

52. Not only has HRM demonstrated its bias against Annapolis by favouring Clayton's interests, HRM has also favoured its own landholding interests at the expense of Annapolis and the proposed park.

53. For example, in 2011, HRM sold some of the land it held in Bayers Lake to a developer for \$50,000 per acre. That land is virtually contiguous to the Annapolis Lands, and a portion of the lands HRM sold was included in the proposed regional park in Map 13 and Map 11. HRM approved development of those lands for the buyer. HRM therefore itself failed to respect the proposed park boundaries.

54. Moreover, to facilitate the private development of Bayers Lake and lands owned by Clayton, HRM incurred substantial costs to finance a highway underpass at Washmill Lake Drive. HRM did not require a capital cost contribution to the underpass from Clayton. HRM incurred this public investment to facilitate private development of an area adjacent to the Annapolis Lands while, as explained below, HRM was simultaneously asserting that financial limitations prevented development of the Annapolis Lands. Furthermore, HRM underestimated its portion of the cost of this public infrastructure by at least \$7 million.

HRM Authorizes Residential Development of Other Private Lands

55. HRM's authorization of residential developments in other lands within HRM further demonstrates its bias against Annapolis.

56. For example, on October 7, 2014, HRM authorized secondary planning to permit residential development of the former Motherhouse Lands. Those lands are across Highway 102 from the Annapolis Lands, and to the south of Clayton's holdings in Bedford South. A portion of the Motherhouse Lands for which HRM authorized secondary planning was designated "Urban Settlement" in the (then-applicable) 2006

RPS. Indeed, unlike the Annapolis Lands, those lands were not within one of the six areas HRM identified for growth within the life of the 2006 RPS.

57. The development proposal for the Motherhouse Lands, which HRM staff recommended, included, among other things:

- 111 single detached dwellings;
- 9 townhouse dwellings;
- 9 apartment buildings, containing 743 dwelling units; and
- 6 mixed use commercial-residential buildings, containing 830 dwelling units and 5,201 square metres of commercial space.

58. HRM therefore authorized residential development of the Motherhouse Lands while maintaining, as explained below, that the Annapolis Lands should not be developed because there was no need for additional residential development in HRM. By ignoring the growth areas identified in its own 2006 RPS, HRM's conduct with respect to the Motherhouse Lands demonstrates its pattern of bias and discrimination against Annapolis.

Annapolis Seeks to Initiate Secondary Planning of the Lands

59. In September 2007, Annapolis contacted HRM regarding initiating secondary planning of, among other areas, the Annapolis Lands.

60. On October 17, 2007, HRM's Manager of Planning Services responded to Annapolis' inquiry, indicating that HRM had commenced a study to determine the cost of servicing the Annapolis Lands. The study, which was released in February 2009, concluded that there were *no* substantive negative impacts for the development of the

Annapolis Lands, and that infrastructure costs were in line with those of developments of a similar size and nature. In short, there is no reason the Annapolis Lands could not be developed.

61. On July 31, 2009, a corporation acting on behalf of Annapolis and other landowners applied for secondary planning for an area which included the Annapolis Lands. The application explained that most of the public infrastructure required to develop the Annapolis Lands was already in place. Of the infrastructure that needed to be built, Annapolis and the other owners confirmed that they would cover 95% of the costs:

Our financing proposal has the private sector picking up +/- 95% of the costs of growth-related transportation infrastructure and all other costs. The private sector's investments in the project will approach \$2.5 billion. Based upon the 2009 CBCL Cost of Servicing Study, we anticipate that HRM will be responsible for around \$750,000 of the \$12,240,000 in transportation costs listed in this report and based upon the current surrounding road system.

62. HRM and its representatives opposed even initiating secondary planning.

63. On October 21, 2009, HRM staff presented a report to the Regional Plan Advisory Committee which recommended that the decision on secondary planning for the Annapolis Lands be deferred until the (second) five-year review of the 2006 RPS in 2016.

64. HRM staff stated that HRM opposed secondary planning on the basis of the financial impact of development, and the absence of need for additional development in HRM. The report indicated:

It is unreasonable for [HRM] to fund and maintain more infrastructure than is required to accommodate growth. Even under a high growth scenario, the current

supply of suburban lands available for development will satisfy municipal requirements for several decades.

...

Over the intermediate and longer term, the fiscal capacity of [HRM] and Halifax Water to undertake financial initiatives would be adversely affected. Premature investments in additional infrastructure would require deferral of competing higher priority capital projects as both entities have limited debt capacity to finance new projects. In the case of [HRM], for example, Council has identified numerous desirable but as yet unfunded projects such as a new library, additional arenas and recreational facilities and landfill cells.

65. The HRM staff report was deliberately misleading. The assertions in it are belied by HRM's approvals of more costly developments of both other private landowners and of its own lands as described above. Moreover, Annapolis submitted a report from Ernst & Young that responds to HRM staff's October 21, 2009 report. Ernst & Young concluded that the assertions in the HRM staff report concerning the cost of development and availability of other lands were flawed.

66. The real reason that HRM opposed secondary planning was that it wished to maintain the Annapolis Lands as a public park, but without formal zoning which would trigger the compensation obligation in sections 65 and 237 of the *Charter*. Indeed, HRM staff acknowledged the motivation to preserve the Annapolis Lands for a public park in meetings with Annapolis representatives over the months following the October 2009 report.

HRM Requires Redundant Environmental Studies

67. On June 23, 2010, HRM staff submitted a report to the Regional Plan Advisory Committee. The report proposed a three-step process to initiate secondary planning of the Annapolis Lands.

68. First, a watershed study should be completed to determine whether there were environmental constraints on, or impacts from, development of the Annapolis Lands. HRM demanded this study even though the Porter Dillon Report discussed above had been completed fifteen years before in relation to essentially the same issues. Moreover, the 2006 EDM Report had reached the same conclusions as the Porter Dillon Report.

69. Second, HRM and Annapolis (and other private owners) should enter into a facilitation process to set the boundaries of the proposed park (the “**Facilitation**”), which was based upon the mutual understanding that HRM required a portion of the Annapolis Lands for its park, a position which HRM staff confirmed during the Facilitation. The Facilitation explicitly tied development of the Annapolis Lands to HRM’s proposed public park.

70. Third, HRM Council would then consider initiating secondary planning if the two conditions above were satisfied.

71. On August 11, 2010, the Regional Plan Advisory Committee adopted the three-phase recommendation of HRM staff, and on November 16, 2010, HRM Council passed a resolution to adopt the HRM staff recommendation described in the preceding paragraphs hereof.

72. In April 2013, the watershed study was completed. Consistent with both the Porter Dillon Report and the 2006 EDM Report, the watershed study concluded that there were only minimal constraints to serviced development. On July 25, 2013, HRM Council accepted the watershed study.

73. In the summer of 2012, Halifax Water and Annapolis agreed on a wastewater servicing plan for the Annapolis Lands to permit development.

74. In April 2014, the Nova Scotia Utility and Review Board approved an application by the Halifax Regional Water Commission for a wastewater functional plan that included the Annapolis Lands.

75. There thus were not then, and are not now, *any* environmental or servicing constraints on development of the Annapolis Lands.

HRM Staff Attempts to End the Facilitation Before It Begins

76. The second stage of the process suggested by HRM staff and approved by HRM Council was the Facilitation.

77. Annapolis and HRM staff had agreed on the terms of reference of the proposed independent facilitator in November 2011. Nevertheless, it was not until two years later, on September 17, 2013, that HRM Council approved the terms of reference and authorized staff to retain the facilitator.

78. HRM accepted at the outset of the Facilitation that development of the Annapolis Lands was one of the Facilitation's core objectives. The HRM staff report presented to HRM Council on September 17, 2013, which recommended the terms of reference for the Facilitation, expressly stated that one purpose of the Facilitation was the development of the Annapolis Lands:

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 ... [Emphasis added.]

79. On September 17, 2013, HRM Council unanimously passed a resolution to the same effect:

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 ... [Emphasis added.]

80. HRM's first proposed facilitator was a recently-retired executive of Clayton. Annapolis did not accept HRM's proposal.

81. On March 14, 2014, HRM and Annapolis agreed that Justice M. Heather Robertson would act as facilitator (the "**Facilitator**").

82. In late August 2014, even before the Facilitation before Justice Robertson began, HRM staff advised Annapolis that HRM would be unlikely to agree on park boundaries. Accordingly, HRM staff suggested that it would seek instructions from HRM Council not to proceed with negotiations at all.

83. In response, Annapolis requested that HRM participate in good faith in the Facilitation as adopted in the Facilitator's terms of reference.

84. HRM staff nonetheless sought HRM Council's approval to end the Facilitation before it began. It is significant that HRM staff sought approval to end the Facilitation in relation to the Annapolis Lands a few weeks before it recommended that HRM Council

authorize secondary planning for the Motherhouse Lands, which added residential development adjacent to the Annapolis Lands, as outlined above.

85. Annapolis wrote to HRM Council regarding HRM staff's request to terminate the Facilitation as follows:

The abrupt unilateral action of [HRM] Staff to kill the process before even having one single substantive meeting with the jointly appointed Facilitator regardless of the consequences to [Annapolis] constitutes actionable bad faith. Having directed a facilitated negotiation and effectively delayed [Annapolis'] applications for four years only to abort the process unilaterally on the eve of its scheduled commencement cannot be characterized otherwise.

Failure to proceed with the process will deprive Council of exploring what can be achieved in the way of parkland acquisition and access to the parkland at no cost or what could be purchased or otherwise acquired at a negotiated price.

The cancellation of the facilitation, quite apart from exposing Halifax Regional Municipality to liability, serves no useful purpose in advancing the objectives of the Regional Planning Strategy. This includes not only permitting development to proceed but also establishing the boundaries for the regional parkland. The cost of acquiring additional private lands for regional parkland will only appreciate over time.

[Annapolis] cannot fathom the basis upon which Halifax Regional Staff has made this recommendation to Council. We would, on behalf of [Annapolis], strongly urge that Council direct Staff to resume the facilitated negotiation process put in place by Regional Council in November, 2010. [Emphasis added.]

86. HRM Council instructed staff to proceed with the Facilitation.

HRM Fails to Participate in the Facilitation in Good Faith

87. The Facilitation occurred over approximately the next eighteen months and included eight formal meetings among representatives of HRM and Annapolis and the Facilitator, as well as a number of informal meetings in the Facilitator's absence. At all times, Annapolis has been willing to sell its lands to HRM at a mutually-acceptable price as part of negotiated resolution.

88. Annapolis prepared a detailed plan for the development of the Annapolis Lands and boundaries for the regional park (the “**Development Plan**”). To generate the Development Plan, Annapolis, at considerable expense, commissioned independent engineering consultants in collaboration with land use planners, to prepare a master plan that allowed for commercial, residential and park development and included preliminary designs and costing for all necessary infrastructure such as storm water, sewer and water services along with roads. Throughout the Facilitation, Annapolis modified the Development Plan as a result of collaboration with HRM staff and the final Development Plan discussed below reflected that input.

89. At the formal meeting on June 23, 2015, HRM staff acknowledged that development of the Annapolis Lands could occur without significant costs to HRM. This acknowledgment is reflected in the Facilitator’s final report as stated below at paragraph 101.

90. Toward the end of 2015, Annapolis representatives had discussions with HRM parks staff to negotiate boundaries for the park. Working together, Annapolis representatives and HRM parks staff reached consensus on the boundaries HRM required for a park. Those boundaries would leave HRM with a substantial park and Annapolis with an economically-viable development. The parties therefore had made significant progress with the negotiations.

91. However, at the very next meeting – and with no explanation given – HRM staff resiled from those boundaries and instead presented a radically different plan for the area. HRM’s presentation was embodied in Map 3A. Map 3A showed regional park

boundaries that included large portions of the Annapolis Lands that had not been identified by HRM park staff as required for park purposes and which HRM would be required to purchase from Annapolis. The remaining eastern portion of the Annapolis Lands would require secondary planning to be developed.

92. Because HRM staff refused to engage in further negotiations, the Facilitation reached an impasse. The Facilitator determined that the only way forward was to seek further instruction from HRM Council.

93. The Facilitator issued an interim report to HRM Council on February 12, 2016. In explaining the rationale for her request of HRM Council, she wrote:

[Counsel for the parties] 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 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, [Map 3A] 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.

94. The Facilitator indicated that HRM staff did not consider HRM's fiscal considerations, the economics of the development of the park, and the economics to Annapolis (and the other developers) with respect to development of the private 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 Highway 102 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 the development of the park, and the economics to the landowners of development of the private lands. [Emphasis added.]

95. At an *in camera* meeting held on March 22, 2016, HRM Council instructed HRM staff to move forward to a final report and public consultation based upon the Development Plan.

96. HRM staff did not engage in further substantive negotiations with Annapolis.

97. HRM failed to act in good faith in respect of the Facilitation.

HRM Council Disregards the Facilitation Process and Rejects Secondary Planning

98. Both the Development Plan and Map 3A were submitted to the public, together with the final report of the Facilitator, in September 2016.

99. Justice Robertson released her final report to HRM Council dated June 1, 2016. In her report, the Facilitator indicated that HRM "cannot delay indefinitely while not permitting the development of the lands" (emphasis added).

100. Justice Robertson, observed, among other things, the following features in connection with Annapolis' Development Plan:

- The original concept boundary for the Regional park contained in the [2014 RPS] does not take into account the economics of opening the lands up for public access. The landowners estimate an investment of \$30 million in infrastructure is required to open the park to public access and their lands to development. This level of investment requires a certain scale of development to be economic.
- Development in the vicinity of the park will provide users to both the regional park and the provincial wilderness park and will facilitate through private investment the opening of public access points to the park and to the Birch Cove Lakes.

...

- 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.
- Development of the private lands will utilize existing public facilities ... 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.

...

- 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.

...

Setting the regional park boundaries as proposed by the landowners in the Development Plan achieves regional park objectives and is economically feasible.
[Emphasis added.]

101. Justice Robertson's final report confirms that HRM staff acknowledged that the Annapolis Lands could be developed without significant investment by HRM:

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. [Emphasis added.]

102. Justice Robertson stated that the park boundaries contained in the 2014 RPS "[do] not take into account the economics of opening the lands up for public access" (emphasis added). Justice Robertson disagreed with HRM staff's position that Annapolis' Development Plan failed to meet the objectives of the proposed park. She stated that in assessing whether boundaries meet the park's objectives, one "must take into account the cost of achieving those objectives."

103. Annapolis highlighted the absence of consideration of economics in a letter to HRM following the Facilitation before Justice Robertson:

Noticeably absent from the discussions and as noted by the Facilitator was any consideration by HRM of the specific economic implications upon our clients of any proposed changes to the park boundary, any account of HRM's fiscal considerations, the economics of park development, and the economics to the landowner of developing its privately held lands. Furthermore, HRM did not identify any land trades or provincial municipal partnerships which could be used as a means of acquiring parkland which it required. [Emphasis added.]

104. On July 26, 2016, HRM Council directed staff to prepare a report regarding the Facilitation and to release it to the public, along with Map 3A.

105. On September 6, 2016 – some nine years after Annapolis' original application to initiate secondary planning – HRM staff presented the report to HRM Council. The report

recommended that HRM take no further action in response to the Facilitator's recommendations and that HRM refuse Annapolis' request to initiate secondary planning of the Annapolis Lands.

106. The HRM staff report also recommended that HRM Council reject both the Development Plan and Map 3A which HRM staff had presented at the Facilitation as described in paragraph 91 above. Annapolis had supported Map 3A to move the process forward if the Development Plan was rejected. Despite Annapolis's willingness to compromise and accept Map 3A, remarkably, HRM staff characterized Annapolis as an "unwilling seller".

107. On September 6, 2016, HRM Council adopted HRM staff's recommendations. It passed the following three separate resolutions:

Resolution #1:

Receive the Facilitator's Report Regarding Negotiation of the Proposed Boundaries for the Blue Mountain/Birch Cove Lakes Regional Park in relation to the Highway 102 West Corridor and take no further action concerning the facilitation process or the report's recommendations.

Resolution #2:

Refuse the request to initiate secondary planning for all Hwy 102 West Corridor lands at this time.

Resolution #3:

Direct staff to explore opportunities and develop a program to acquire land to establish the proposed Blue Mountain – Birch Cove regional park, with a priority of providing public access to the provincially protected wilderness area, that includes, but is not limited to:

Discussions with the Federal and Provincial governments;

Discussions with all private land owners that own property located within the conceptual park boundary in Map 11 of the Regional Plan;

Discussions with land conservation and community groups; and

Reviewing the potential use of land use planning tools and conservation easements.

Staff is further directed to report back to Regional Council within six (6) months and then on an annual basis, staff to report to Council on progress achieved in implementing the established Blue Mountain/Birch Cove Regional Park.

[Emphasis added.]

108. After passing these resolutions, HRM Council did not consider a resolution: (a) to establish the regional park boundaries in accordance with Map 3A, despite HRM's having presented Map 3A during the Facilitation, and (b) proceed to secondary planning with the remaining portions of the Annapolis Lands.

109. HRM Council's September 6, 2016 resolutions have the following results: (a) the Annapolis Lands are taken as a park without compensation to Annapolis and without HRM's being subject to the statutory one year constraint in subsection 237(2) of the *Charter*; and (b) despite being zoned "Urban Settlement", the Annapolis Lands cannot be developed.

110. HRM Council and staff have thus acted in bad faith, abusing a public office, throughout this entire decade-plus matter.

HRM Has *De Facto* Expropriated the Lands as a Park Without Compensation

111. Based on the facts above, HRM has *de facto* expropriated the Annapolis Lands for public use as a park. HRM has delayed and obstructed all of Annapolis' attempts to develop the Annapolis Lands, and likewise, has deliberately avoided expressly zoning the Annapolis Lands to avoid its compensation obligation. In doing so, it has obtained the use of the Annapolis Lands as a public park, and has deprived Annapolis of any use of the Annapolis Lands.

112. Indeed, HRM encourages members of the public to use the Annapolis Lands as a park. In addition to a variety of other outdoor activities, members of the public hike, cycle, canoe, camp, and swim on the Annapolis Lands as if HRM held the Annapolis Lands as a park. The 2006 EDM Report acknowledged these uses:

The Study Area [which included the Annapolis Lands] is regularly used for recreation with well established, if unofficial, walking, hiking, and mountain biking trails. With the exception of the BLT Trail, a Rails to Trails project undertaken by the Beechville / Lakeside / Timberlea community with the assistance of HRM and the Province, no trail has a Letter of Authority from [the Nova Scotia Department of Natural Resources] recognizing the right-of-way for trails purposes. To the best of our knowledge, none of the trails on private lands within the Study Area is endorsed by any owner. [Emphasis added.]

113. HRM facilitates public access to the Annapolis Lands by encouraging and/or permitting parking on the west side of Highway 102. HRM does not enforce no-parking regulations, even though such parking is a safety risk to motorists and individuals exiting vehicles to enter onto the Annapolis Lands.

114. In addition, HRM has unilaterally taken the Annapolis Lands as a contiguous park with the adjacent Wilderness Area. The public almost exclusively accesses the

Wilderness Area through use of the Annapolis Lands, and HRM nonetheless encourages the use of the Wilderness Area. In making statements to encourage the use of the Wilderness Area, HRM and its representatives know that they are encouraging use of the Annapolis Lands by the public as a single regional park consistent with Map 11.

115. HRM and its representatives have also made public statements to indicate that the Annapolis Lands are already set aside as a public park, and that Annapolis' efforts to develop the Annapolis Lands are illegitimate.

116. Because of the conduct of HRM and its representatives, a substantial portion of the HRM public believes that the Annapolis Lands have already been designated as a public park, and/or that the Annapolis Lands cannot ever be developed because they are set aside as a public park.

117. By virtue of the foregoing, Annapolis is entitled to compensation. First, HRM acquired a beneficial interest in the Annapolis Lands in exercise of statutory authority under Part VIII of the *Charter*. Second, HRM's acquisition caused the removal of all reasonable uses of the Annapolis Lands for Annapolis. As particularized at paragraphs 9 to 15 above, the only reasonable uses of the Annapolis Lands are for development. Third, HRM's conduct amounts to a taking of land by an expropriating authority without the consent of the private owner, Annapolis, pursuant to the definition of "expropriate" in section 3(1)(c) of the *Expropriation Act*, such that HRM is obligated to follow the process detailed in the statute and to compensate Annapolis pursuant to sections 6 and 24 of the *Expropriation Act*. In any event, the *Charter* cannot be interpreted to authorize acquisition of private land by HRM without compensating the owner as a matter of

statutory interpretation. Indeed, section 65 of the *Charter* expressly provides that HRM's acquisitions of private land are subject to the *Expropriation Act*.

HRM has been Unjustly Enriched

118. HRM has been unjustly enriched at the expense of Annapolis by obtaining a public park on the Annapolis Lands without paying Annapolis compensation. First, HRM was unjustly enriched by obtaining a public park on the Annapolis Lands. Second, there was a corresponding deprivation to Annapolis because Annapolis was precluded from developing the Annapolis Lands without compensation. Third, there was no juristic reason for the enrichment, because HRM deliberately avoided the expropriation process prescribed by sections 65 and 237 of the *Charter* and the *Expropriation Act*, by which HRM could obtain the Annapolis Lands as a park through the payment of compensation to Annapolis. Annapolis is therefore entitled to restitution in the form of a monetary remedy reflecting the value of the Annapolis Lands of which it was unjustly deprived.

119. In addition, and in the alternative, HRM has been enriched by obtaining improvements on the Annapolis Lands, including, for example, maintenance and upgrades to the dam system in excess of \$5 million since 2006. Annapolis suffered a corresponding deprivation since it alone paid for those improvements, and received no compensation for them from HRM. There is no juristic reason for HRM's enrichment. Accordingly, Annapolis is entitled to compensation for the value of these improvements.

HRM and its Representatives Abused their Public Offices

120. HRM and its representatives, for whom HRM is both directly and vicariously liable, have abused their public offices by engaging in deliberate unlawful conduct in the exercise of public functions with the awareness that the conduct was unlawful and likely to injure Annapolis. HRM and its representatives committed these abuses of public office in two ways.

121. First, as particularized at paragraphs 6 to 110 above, HRM and its representatives have refused to initiate secondary planning of the Annapolis Lands and/or the statutory process to expropriate the Annapolis Lands with the specific intention of injuring Annapolis.

122. Second, as particularized at paragraphs 6 to 110 above, HRM and its representatives engaged in several deliberate unlawful acts not authorized by the *Charter* or other statute, including:

(a) acquiring the Annapolis Lands without complying with the statutory process to expropriate them under sections 65 and 237 of the *Charter* and the *Expropriation Act*;

(b) acting in bad faith by reason of the foregoing, as well as by refusing to initiate secondary planning of the Annapolis lands under the *Charter*;

(c) discriminating and exhibiting bias against Annapolis by favouring HRM's own developments and those of other private owners, including Clayton, without authorization under the *Charter*; and

(d) breaching the duties of procedural fairness and natural justice owed to Annapolis in the processes followed to acquire the Annapolis Lands, including by establishing procedures such as the Facilitation before Justice Robertson that HRM had no intention of following, and by failing to disclose HRM's true intentions to Annapolis regarding the public park and giving Annapolis an opportunity to respond.

123. HRM knew that these acts were unlawful and that they were likely to harm Annapolis.

124. These abuses of public office were the legal cause of compensable injury to Annapolis because they deprived it of the value of the Annapolis Lands without compensation.

Statutes Pleaded

125. Annapolis pleads and relies upon the following statutes:

- (a) *Expropriation Act*, R.S.N.S. 1989, c. 156;
- (b) *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39;
- (c) *Interest on Judgements Act*, R.S.N.S. 1989, c. 233;

Relief Sought

126. As a result of the foregoing, Annapolis requests:

- (a) Constructive or *de facto* expropriation:
 - (i) A declaration that HRM has constructively or *de facto* expropriated the Annapolis Lands;
 - (ii) An order requiring HRM to pay Annapolis for the value of the Annapolis Lands in the amount of \$119,300,000 or \$80,829 per acre plus development proceeds, being the amount at which the Annapolis Lands were valued by an independent valuator in 2014;
 - (iii) In the alternative, an order requiring HRM to pay Annapolis for the value of the Annapolis Lands in the amount of \$77,999,985 or

\$80,829 per acre, being the amount at which the Annapolis Lands were valued by an independent valuator in 2014;

- (iv) In the further alternative, an order requiring HRM to pay Annapolis the value of the Annapolis Lands as determined by the Court.
 - (v) An order requiring HRM to pay Annapolis for the value of the improvements Annapolis has made to the Annapolis Lands, including but not limited to dam upgrades and maintenance, in an amount to be provided prior to the trial of this action.
- (b) Unjust enrichment:
- (i) A declaration that HRM has been unjustly enriched by the use of the Annapolis Lands;
 - (ii) An order requiring HRM to pay Annapolis for the value of the Annapolis Lands in the amount of \$119,300,000 or \$80,829 per acre plus development proceeds, being the amount at which the Annapolis Lands were valued by an independent valuator in 2014;
 - (iii) In the alternative, an order requiring HRM to pay Annapolis for the value of the Annapolis Lands in the amount of \$77,999,985 or \$80,829 per acre, being the amount at which the Annapolis Lands were valued by an independent valuator in 2014;
 - (iv) In the further alternative, an order requiring HRM to pay Annapolis the value of the Annapolis Lands as determined by the Court;
 - (v) In the further alternative, an order requiring HRM to initiate the statutory process to expropriate the Annapolis Lands pursuant to the *Expropriation Act*;

- (vi) An order requiring HRM to pay Annapolis for the value of the improvements Annapolis has made to the Annapolis Lands, including but not limited to dam upgrades and maintenance, in an amount to be provided prior to the trial of this action.
- (c) Abuse of, or misfeasance in, public office:
 - (i) A declaration that HRM and its representatives have committed the tort of abuse of, or misfeasance in, public office in respect of Annapolis;
 - (ii) An order requiring HRM to pay Annapolis for the value of the Annapolis Lands in the amount of \$119,300,000 or \$80,829 per acre plus development proceeds, being the amount at which the Annapolis Lands were valued by an independent valuator in 2014;
 - (iii) In the alternative, an order requiring HRM to pay Annapolis for the value of the Annapolis Lands in the amount of \$77,999,985 or \$80,829 per acre, being the amount at which the Annapolis Lands were valued by an independent valuator in 2014;
 - (iv) In the further alternative, an order requiring HRM to pay Annapolis the value of the Annapolis Lands as determined by the Court.
 - (v) An order requiring HRM to pay Annapolis for the value of the improvements Annapolis has made to the Annapolis Lands, including but not limited to dam upgrades and maintenance, in an amount to be provided prior to the trial of this action.
- (d) An order requiring HRM to pay pre-judgment and post-judgment interest;
and
- (e) Costs of this action on a solicitor-client basis.

Signature

Signed March 22, 2017



for **MCCARTHY TETRAULT LLP**
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Annapolis Group Inc.

SUPREME COURT OF NOVA SCOTIA

Between:

ANNAPOLIS GROUP INC.

PLAINTIFF

and

HALIFAX REGIONAL MUNICIPALITY

DEFENDANT

NOTICE OF ACTION
Amended: March 22, 2017

To: Halifax Regional Municipality
c/o Office of the Municipal Clerk
City Hall
1841 Argyle Street, Main Floor
Halifax NS B3J 3A5

Action has been started against you

The Plaintiff takes action against you.

The Plaintiff started the action by filing this notice with the court on the date certified by the Prothonotary.

The Plaintiff claims the relief described in the attached Amended Statement of Claim. The claim is based on the grounds stated in the Amended Statement of Claim.

Deadline for defending the action

To defend the action, you or your counsel must file a notice of defence with the court no more than the following number of days after the day this notice of action is delivered to you:

- 15 days if delivery is made in Nova Scotia
- 30 days if delivery is made elsewhere in Canada

- 45 days if delivery is made anywhere else.

Judgment against you if you do not defend

The court may grant an order for the relief claimed without further notice, unless you file the notice of defence before the deadline.

You may demand notice of steps in the action

If you do not have a defence to the claim or you do not choose to defend it you may, if you wish to have further notice, file a demand for notice.

If you file a demand for notice, the Plaintiff must notify you before obtaining an order for the relief claimed and, unless the court orders otherwise, you will be entitled to notice of each other step in the action.

Rule 57 - Action for Damages Under \$100,000

Civil Procedure Rule 57 limits pretrial and trial procedures in a defended action so it will be more economical. The Rule applies if the Plaintiff states the action is within the Rule. Otherwise, the Rule does not apply, except as a possible basis for costs against the plaintiff.

This action is not within Rule 57.

Filing and delivering documents

Any documents you file with the court must be filed at the office of the Prothonotary 1815 Upper Water Street, Halifax, Nova Scotia B3J 1S7 (telephone # 902- 424-4900)

When you file a document you must immediately deliver a copy of it to each other party entitled to notice, unless the document is part of an *ex parte* motion, the parties agree delivery is not required, or a judge orders it is not required.

Contact information

The Plaintiff designates the following address:

Neil Finkelstein / Eric Block
Brandon Kain / Paul Davis
McCarthy Tétrault LLP
Suite 5300, TD Bank Tower
66 Wellington Street West
Toronto, ON M5K 1 E6

Documents delivered to this address are considered received by the Plaintiff on delivery.

Further contact information is available from the Prothonotary.

Proposed place of trial

The Plaintiff proposes that, if you defend this action, the trial will be held in Halifax, Nova Scotia.

Signature

Signed March 22, 2017

MCCARTHY TÉTRAULT LLP

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**Counsel for the Plaintiff,
Annapolis Group Inc.**

Prothonotary's certificate

I certify that this Amended Notice of Action, including the attached Amended Statement of Claim, was filed with the Court on March 22, 2017.

Prothonotary

Form 4.02B**STATEMENT OF CLAIM**
Amended: March 22, 2017**Overview**

1. By statute, the Halifax Regional Municipality (“HRM”) cannot take private property without paying just compensation. And yet it has *de facto* but effectively, and intentionally, expropriated lands belonging to Annapolis Group Inc. (“Annapolis”) for use as a public park. In doing so, HRM has breached sections 65 and 237 of the *Halifax Regional Municipality Charter* (the “*Charter*”) and sections 6 and 24 of the *Expropriation Act* (the “*Expropriation Act*”), and committed the torts of *de facto* expropriation (taking) without compensation and abuse of public office. HRM is liable for damages as a result. As well, HRM has unjustly enriched itself at Annapolis’ expense and is liable for restitution.

2. While the *Charter* gives HRM the authority to acquire private lands for public use, it also provides that HRM “shall, within one year of the effective date of the zoning, acquire the land” (section 237(2)). HRM has expressly refused to engage in the statutory zoning to avoid its obligation to compensate Annapolis fairly for the taking of its property. Instead, HRM has prevented Annapolis from making *any* use of its lands, and has thus effectively acquired those lands for use as a *de facto* park for nothing.

3. HRM has denied Annapolis natural justice and has demonstrated bias against Annapolis.

4. HRM and its representatives have abused their public offices by acting for the purpose of harming Annapolis. They have acted in bad faith and discriminated against

Annapolis by preferring development of other owners' lands and HRM's own lands. HRM did so with the knowledge that such conduct would harm Annapolis. Through its intentional conduct, HRM has caused Annapolis to suffer damages.

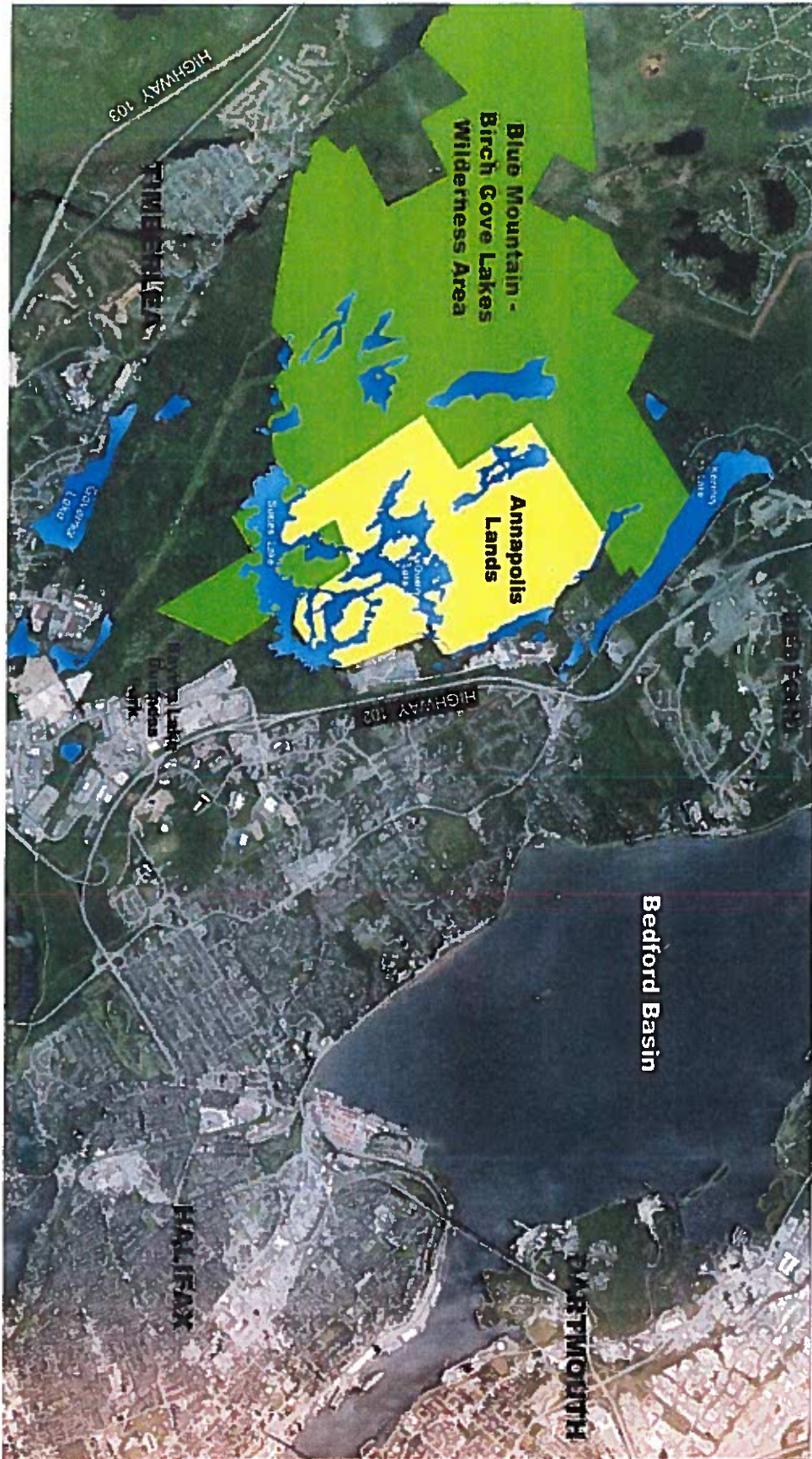
5. HRM is directly and vicariously liable for the breach of statute, torts and other wrongdoing pleaded herein.

The Parties and Background

6. Annapolis is a corporation organized under the laws of the Province of Nova Scotia, with registered offices located at 380 Bedford Highway, Halifax, Province of Nova Scotia. Among other lands, Annapolis owns 965 acres west of peninsular Halifax, in the following location: east of the Blue Mountain – Birch Cove Lakes Wilderness Area, west of Highway 102, north of Bayers Lake and south of Kearney Lake (the “Annapolis Lands”). The Annapolis Lands contain a number of lakes, including Quarry and Susie Lakes, which are man-made by dams initially built by previous owners of the Annapolis Lands, but maintained and upgraded by Annapolis at considerable expense.

7. Annapolis and its predecessor companies have held the bulk of the Annapolis Lands since 1956, when it acquired Moirs Limited, which began assembling the lands in 1903.

8. The Annapolis Lands are shown in relation to greater Halifax in the following map, which is reproduced in larger form in Appendix “A”:



9. In 1982, the former City of Halifax applied to the Board of Commissioners of Public Utilities (the “Board”) to annex, among other areas, the Annapolis Lands. In submitting its application, the City “submitted that it was the most logical provider of services for the area, [and] that [it] should have control of such servicing for it affects the capital budgeting process of the City and the rate [at] which development should come on stream.” The Board agreed with the City that the City would provide services for the area. The Board approved annexation on the basis “that any development [in the area that included the Annapolis Lands] would result in a much greater community of interest relationship of the residents with the City [of Halifax] than with” outlying areas. Development of the Annapolis Lands was contemplated in the future.

10. After annexation, the City of Halifax Municipal Development Plan designated the Annapolis Lands for future serviced urban development.

11. In 1994, Annapolis and the City of Halifax shared the cost of upsizing a sewer through the Wedgewood Ravine area to facilitate future development of the Annapolis Lands.

12. In October 1995, Porter Dillon, an engineering, planning and environmental science firm retained by the City of Halifax, released a study of the broader area that included the Annapolis Lands (the “Porter Dillon Report”). The study concluded:

... the study area contains few features that, based on the study criteria developed in conjunction with the City, substantially restrict development. Close to 80% of the Primary Study Area [which included the Annapolis Lands] can accommodate low, medium and high density residential development and large scale commercial and industrial development. [Emphasis added.]

13. The Annapolis Lands became subject to the authority of HRM as the City of Halifax's successor upon amalgamation in 1996. HRM is a regional municipality continued pursuant to the *Charter*.

14. On July 16, 1996, HRM Council accepted the Porter Dillon Report as a guide for future planning and development of the area.

15. Serviced development has therefore been the intended use of the Annapolis Lands since at least 1982. Since at least 1995, environmental and servicing studies have consistently concluded that there are minimal constraints to development of the Annapolis Lands. There are no other reasonable uses of the Annapolis Lands.

The Regional Planning Strategy Designates a Park

HRM Adopts the 2006 Regional Planning Strategy

16. In 2006, HRM adopted a Regional Planning Strategy (the "**2006 RPS**"). The 2006 RPS designated the Annapolis Lands in two ways.

17. First, a portion of the Annapolis Lands was designated "Urban Settlement":

The primary intention of the Urban Settlement Designation is to define those areas where urban forms of development will occur throughout the next 25 years. The designation encompasses both developed and undeveloped lands and includes the following six sites 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.
18. The portion of the Annapolis Lands designated “Urban Settlement” is within the Highway 102 west corridor, which is item 6 in the list of urban growth areas above.
19. Second, the 2006 RPS designated the remaining portion of the Annapolis Lands “Urban Reserve”:

The primary intent of the Urban Reserve Designation is to ensure there is a continuous supply of land that can be serviced with central (municipal wastewater and water distribution) services beyond the 25 year time horizon of this Plan. The Urban Settlement Designation identifies those lands which HRM intends to service within the next 25 years. The Urban Reserve Designation focuses on those lands abutting the Urban Settlement Designation which could be serviced beyond the next 25 years to ensure the Municipality has a long-term supply of serviceable lands.

20. The Halifax Mainland Land Use By-law zoned the areas in accordance with the 2006 RPS – and continues to zone them in the same manner up to the present. Zoning allows for residential uses, but only if: (a) residences are built on existing roads, and (b) a private on-site sewage disposal system and well are provided on the lot. None of the requisite infrastructure is in place on the Annapolis Lands, and thus HRM’s authorization for secondary planning is required to develop the Annapolis Lands.
21. Although it designated the Annapolis Lands for development, the 2006 RPS included a map in one of its appendices (“Map 13”). Map 13 showed a regional park encompassing a broad area including approximately 765 acres of the Annapolis Lands. HRM thus showed its intention early on to take the Annapolis Lands for a park. While HRM then purported to negotiate with Annapolis for the next 10 years to move forward

with settling the park boundaries and consideration of the Annapolis Lands for secondary planning approval, HRM did so in bad faith as indicated herein and, at its Council meeting on September 6, 2016, reverted to its position that the Annapolis Lands must be reserved for a park.

22. The legend to 2006 RPS Map 13 described the park as follows:

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 Regional Park is for Human Uses, not Ecological Protection

23. The conceptual park boundaries in Map 13 were derived from the 2006 report regarding the park by Environmental Design Management (“EDM”). EDM was retained by HRM during the process leading up to the 2006 RPS (the “2006 EDM Report”). The 2006 EDM Report commented on the area included in the park, including the Annapolis Lands:

- The various landscape features described in the suitability models of the Blue Mountain Birch Cove Lakes landscape, while special to many visitors, do not rank as outstanding at a regional or provincial level of assessment.
- Known significant, unique, or rare individual landscape elements within the Study Area suggest the property should receive greater attention. No individual element identified would greatly diminish the value of the park if it were not included. This suggests that the ideal configuration for the Park is somewhat flexible and can respond to site and community issues as the Park is delineated over time. [Emphasis added.]

24. The 2006 EDM Report contemplated that the regional park would be used by members of the public for outdoor activities and not as an ecological reserve:

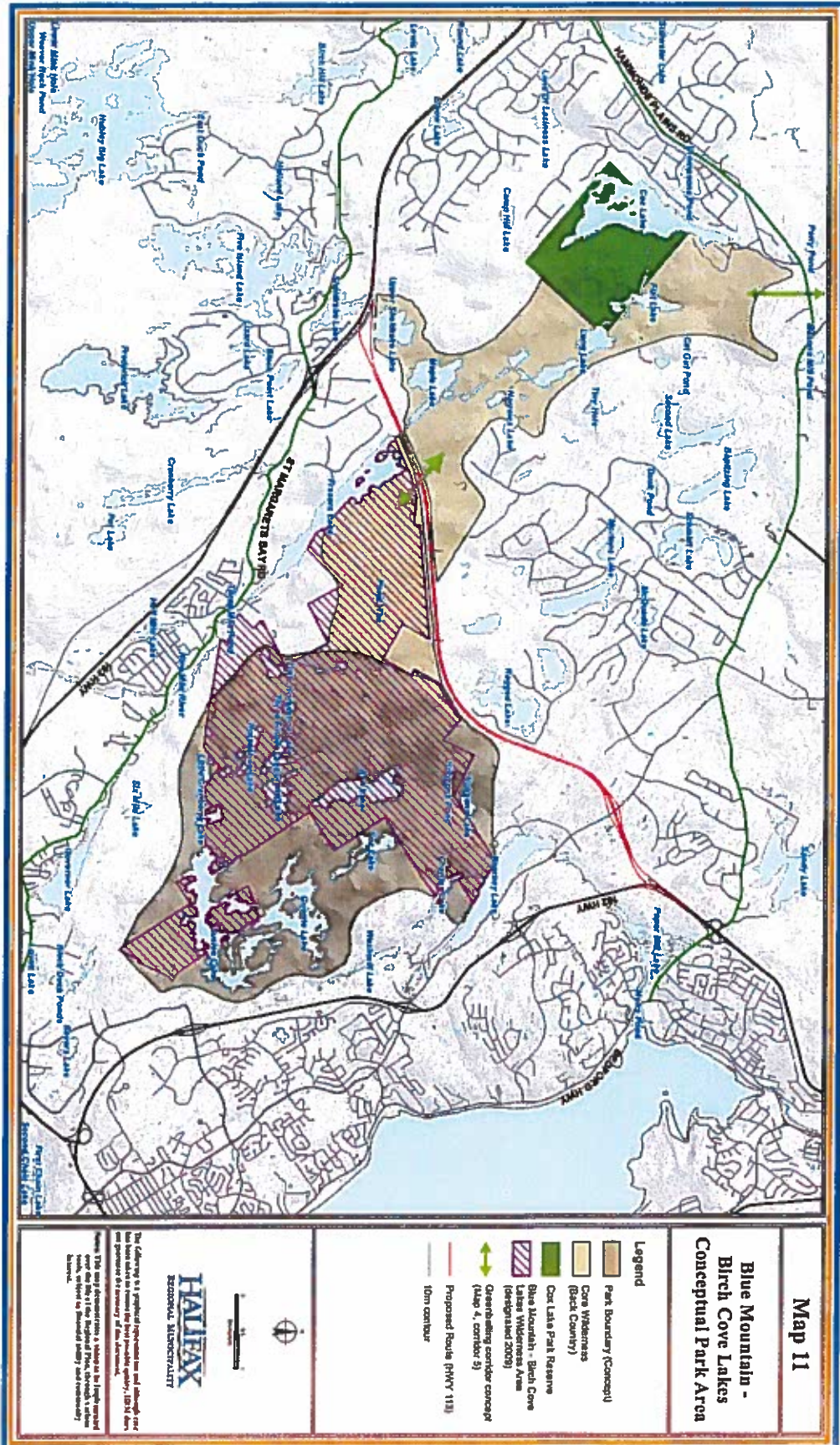
- The proposed Blue Mountain / Birch Cove Lakes Regional Park is not intended as an ecological reserve. Its recommended role is primarily as a human-use park in which the “natural environment” is preserved for human use. Landscape conservation will be undertaken in conjunction with trails and areas for swimming, skating, canoeing and other recreational activities.

HRM Adopts the 2014 Regional Planning Strategy

25. In October 2014, HRM adopted a new Regional Planning Strategy (the “**2014 RPS**”). The 2014 RPS designates the Annapolis Lands in the same manner as the 2006 RPS, and it continues to identify the Urban Settlement portion of the Annapolis Lands as a growth area. The 2014 RPS also adopts the same conceptual boundaries for the park as Map 13 in a new Map 11, with an identical comment in the map’s legend.

26. Map 11 also includes the Blue Mountain-Birch Cove Lakes Wilderness Area (the “**Wilderness Area**”), which the Province of Nova Scotia designated in 2009 and 2015 pursuant to the *Wilderness Areas Protection Act*, S.N.S. 1998, c. 27. The Wilderness Area is a protected zone comprised of over 4000 acres of Crown land.

27. Map 11 showing the Blue Mountain – Birch Cove Lakes Conceptual Park Area is as follows, ~~and is reproduced in larger form in Appendix “B”:~~



28. The 2014 RPS describes the park for which HRM is using the Annapolis Lands as follows:

Lands within the Blue Mountain-Birch Cove Lakes Park are both privately and publically [sic] owned and a study has been completed to determine the appropriate boundaries for the park. A conceptual geographic area for the park is shown on Map 11. 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. [Emphasis added.]

29. The 2014 RPS therefore effectively designates the vast majority (765 of the 965 acres of the Annapolis Lands, or 80%) of the Annapolis Lands as a future park. At the same time, it purported to set aside part of the same Annapolis Lands for serviced development within the life of the 2014 RPS.

The Legislation Requires HRM to Expropriate Lands Set Aside for Public Use

30. It is central to this case that HRM *must* expropriate lands which it zones for public use. Specifically, section 237 of the *Charter* requires HRM to acquire lands zoned for future public use within one year:

Future Public Use

237. (1) The Council may zone privately owned land for future public use other than transportation reserves if the by-law provides for an alternative zone on the land, consistent with the municipal planning strategy.

(2) Where privately owned land is zoned for future public use, the Municipality shall, within one year of the effective date of the zoning, acquire the land or the alternative zone comes into effect. [Emphasis added.]

31. Section 65 of the *Charter* requires HRM to effect that acquisition by expropriating the land pursuant to the *Expropriation Act*:

65. (1) Where the Council considers it necessary to acquire real property, including real property outside the Municipality, for a purpose for which it may spend money, the Council may expropriate the real property, but this power to expropriate does not authorize the Municipality to expropriate property of another municipality.

...

(3) The Expropriation Act applies to expropriation proceedings by the Municipality. [Emphasis added.]

32. Section 6 of the *Expropriation Act* requires HRM, an expropriating authority, to follow a prescribed process for taking the Annapolis Lands without the consent of the owner, Annapolis, and section 24 requires that it compensate Annapolis in doing so.

33. HRM staff conceded in a report submitted to HRM Council in October 2011 that the Annapolis Lands were not zoned as a park in the 2006 RPS because, had that been done, HRM would have been forced to pay for the Annapolis Lands pursuant to sections 65 and 237 of the *Charter*:

The privately-owned lands within the proposed boundary of the park are designated and zoned “Urban Reserve” or “Urban Settlement”. The reason the privately-owned lands were not zoned “Regional Park” at the time of the adoption of the Regional Plan was because, as mandated by provincial planning legislation, HRM would have been required to purchase the subject lands within a one year time frame. [Emphasis added.]

34. Thus, in order to preserve the Annapolis Lands for use as a park, but to avoid having to pay Annapolis for that land as required by subsection 237(2) of the *Charter*, HRM has, for the wrongful purpose of *de facto* expropriation, expressly refused to follow the statutory process to expropriate and pay for the Annapolis Lands.

HRM has Demonstrated Bias against Annapolis

35. HRM has demonstrated bias against Annapolis through its conduct in respect of development of other land under its authority, and in particular, has discriminated in favour of Clayton Developments Ltd. (“Clayton”), its own land holdings and other private owners. Some examples of HRM’s discrimination are detailed below.

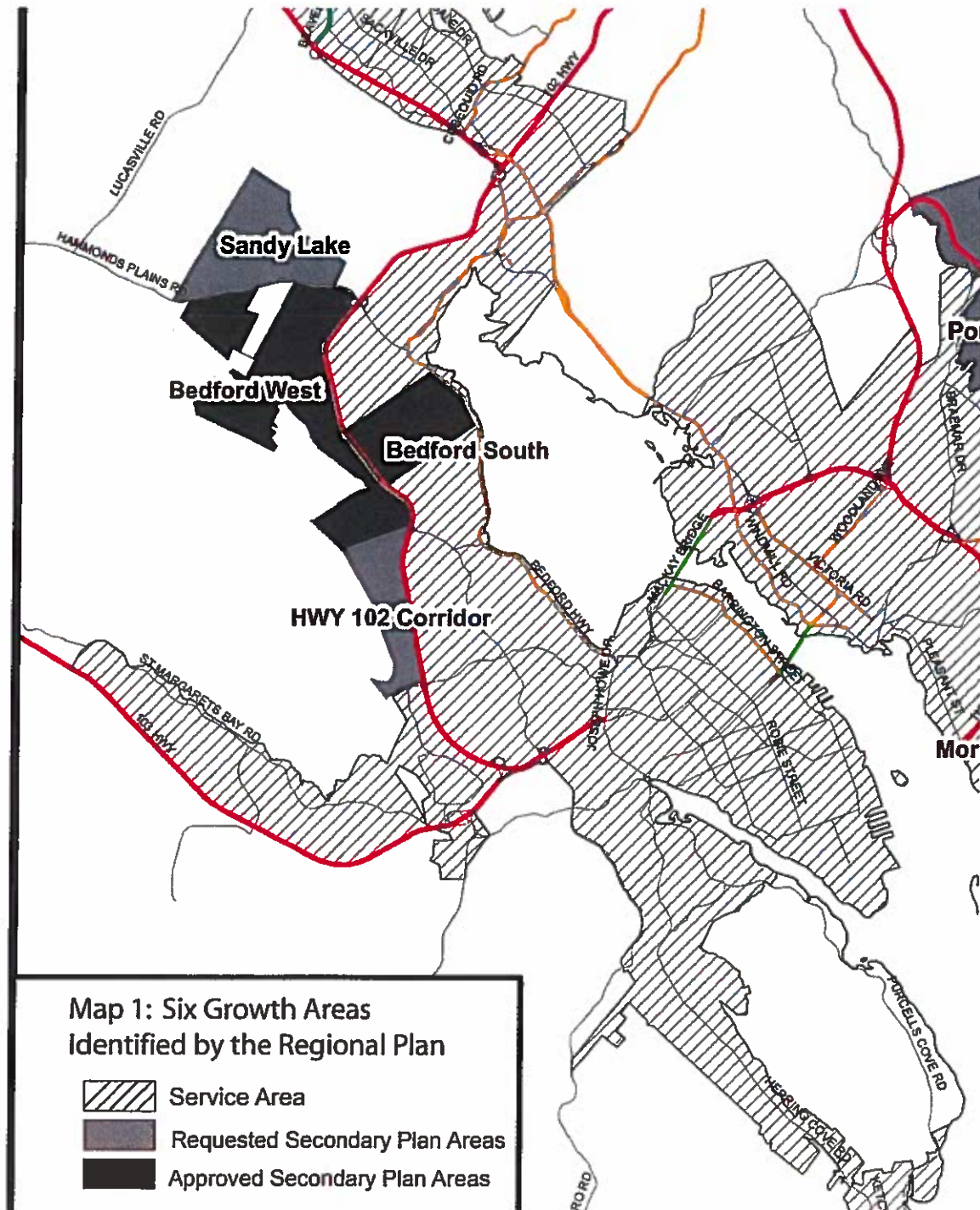
HRM Favours Clayton’s Developments in Bedford

36. Among its other holdings in HRM, Annapolis formerly held lands in Bedford West.

37. In the early 2000s, Annapolis applied to HRM to develop its land holdings in Bedford West. Despite detailed development plans consistent with the applicable requirements, HRM did not authorize secondary planning for those lands for several years. Only in 2006 – when Annapolis agreed to sell its Bedford West lands to a company owned by Cresco Developments Ltd., which Annapolis later learned had partnered with Clayton to develop Bedford West – did HRM finally authorize secondary planning, with no material changes to the development plan by Annapolis.

38. Also in the early 2000s, Clayton was seeking to develop land holdings in Bedford South, a suburban area just to the northeast of the Annapolis Lands across Highway 102 abutting the Bedford Basin. Bedford South is adjacent to both Bedford West and to the Annapolis Lands. The following map, which is taken from an HRM staff report submitted to HRM Council in November 2010, shows Bedford West and Bedford South

in relation to the Annapolis Lands (which are part of the lands identified as the Highway 102 Corridor):



39. Clayton acquired its holdings in Bedford South from a group of private owners who had been unable to obtain authorization for secondary planning from HRM.

40. Clayton's Bedford South lands required more costly infrastructure investment by HRM than the Bedford West lands required. HRM nevertheless approved development of Clayton's Bedford South lands, despite the greater cost to HRM, more quickly than Bedford West when it was owned by Annapolis.

41. For the Bedford South development, HRM established a Capital Cost Contribution arrangement. In such an arrangement, the municipality, here HRM, provides the initial capital outlay to construct the infrastructure necessary to support a development. The municipality recovers the costs by recovering a small amount from the developer as each parcel in the subject area is developed.

42. There were two significant problems with the Capital Cost Contribution arrangement for Bedford South. First, HRM significantly underestimated the costs of the infrastructure to be built. Second, HRM compounded its error when it failed to include a mechanism to require the private owners, including Clayton, to contribute additional funds if HRM's estimate proved inaccurate.

43. Annapolis advised HRM before HRM finalized the arrangement for Bedford South that the estimates were too low and that HRM should include a mechanism to require the private owners, including Clayton, to share infrastructure costs incurred in excess of the (understated) estimates.

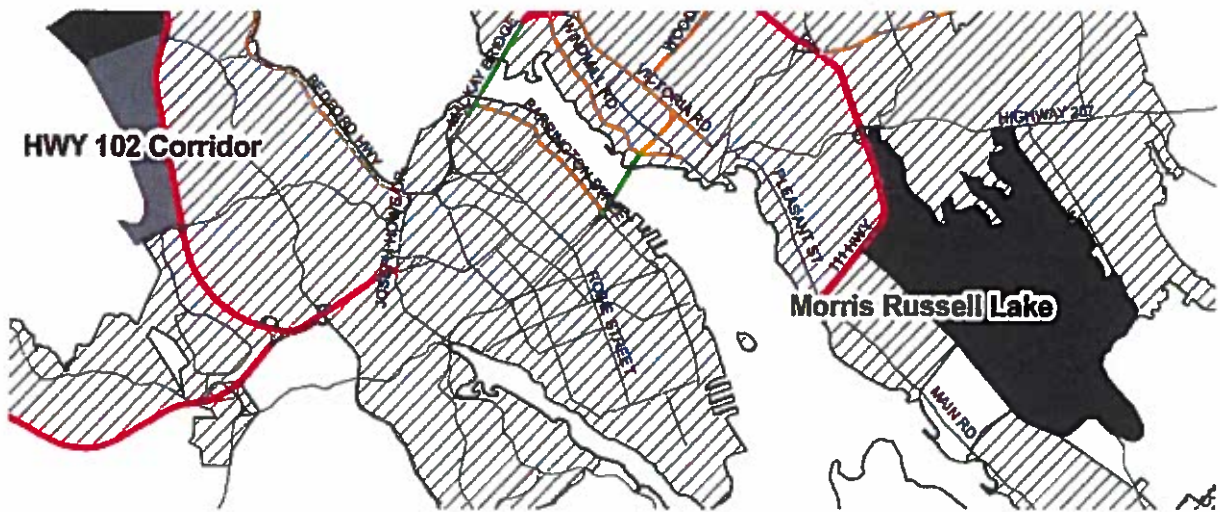
44. HRM ignored Annapolis' warning and proceeded with the proposed arrangement in any event. The result was as Annapolis (and others) predicted: HRM incurred substantial infrastructure costs in excess of its estimates which effectively subsidized development of private owners' holdings, including Clayton's, in Bedford South. As a result of the uneconomical arrangement HRM made, HRM became financially interested in ensuring that the private owners' holdings, including Clayton's, in Bedford South developed as quickly as possible in order to obtain capital contributions from the development to offset HRM's capital outlay, much of which was irrecoverable.

45. In addition to HRM's uneconomical Capital Cost Contribution arrangement for Bedford South, HRM subsequently established an uneconomical Capital Cost Contribution arrangement to subsidize development of Bedford West once Clayton had purchased lands in that area. Annapolis advised HRM of Annapolis' concern that substantial financial commitments on HRM's part would prevent other developments, including that of the Annapolis Lands, from going forward. HRM also relied on unrealistic projections as to the pace of development of Bedford West. As a result of the arrangement, HRM became and continues to be financially interested in ensuring Bedford West develops as quickly as possible.

46. As a result of HRM's agreements in respect of Bedford South and Bedford West, which benefitted private land owners, including, most particularly, Clayton, HRM has an interest in preventing competing adjacent developments, including, most particularly, the Annapolis Lands.

HRM Favours Clayton's Morris-Russell Lake Development

47. In the 2000s, Clayton also held lands in the area of Dartmouth commonly known as Morris-Russell Lake that Clayton sought to develop. Those lands are shown in the following map:



48. As with Clayton's lands in Bedford, HRM established an uneconomical Capital Cost Contribution arrangement in respect of Morris-Russell Lake, which both underestimated the infrastructure costs associated with the development and did not include a mechanism to share costs in excess of the estimate with private owners, including most importantly Clayton.

49. In setting the Capital Cost Contribution arrangement for Morris-Russell Lake, HRM purported to anticipate receiving capital cost contributions from the development of parcels of lands owned by the Department of National Defence, even though HRM had no assurance that those lands would ever be developed and there was no reasonable prospect of such development. Indeed, despite formally relying on the proceeds of those lands in the arrangement, HRM failed to include in the arrangement a costly connector

roadway that would have been required to develop the Department of National Defence lands, as well as adjacent privately-owned lands in the growth area which were not owned by Clayton. As a result, Clayton received the benefit of smaller contributions due to a larger area of land included in the arrangement without having to incur the cost of the infrastructure required to develop those same lands. Effectively, HRM subsidized the construction of a costly highway interchange to open a small area of Clayton's lands for development in Morris-Russell Lake.

Clayton Employs HRM Staff as Senior Executives

50. Former HRM staff have become officers and senior executives of Clayton. With former HRM staff who were involved in land development and land use in the employ of Clayton, HRM has continued to prefer Clayton's interests over those of Annapolis. Annapolis expressed its concerns about these matters to HRM, including during the Facilitation process described below.

51. A competitor's employment of former HRM staff contributes to HRM's bias and discrimination against Annapolis. Of the six areas identified for development in the 2006 RPS listed at paragraph 17 herein, HRM has approved secondary planning for only those areas in which Clayton holds an interest.

HRM Favours Development of its Own Lands within the Proposed Park Boundaries

52. Not only has HRM demonstrated its bias against Annapolis by favouring Clayton's interests, HRM has also favoured its own landholding interests at the expense of Annapolis and the proposed park.

53. For example, in 2011, HRM sold some of the land it held in Bayers Lake to a developer for \$50,000 per acre. That land is virtually contiguous to the Annapolis Lands, and a portion of the lands HRM sold was included in the proposed regional park in Map 13 and Map 11. HRM approved development of those lands for the buyer. HRM therefore itself failed to respect the proposed park boundaries.

54. Moreover, to facilitate the private development of Bayers Lake and lands owned by Clayton, HRM incurred substantial costs to finance a highway underpass at Washmill Lake Drive. HRM did not require a capital cost contribution to the underpass from Clayton. HRM incurred this public investment to facilitate private development of an area adjacent to the Annapolis Lands while, as explained below, HRM was simultaneously asserting that financial limitations prevented development of the Annapolis Lands. Furthermore, HRM underestimated its portion of the cost of this public infrastructure by at least \$7 million.

HRM Authorizes Residential Development of Other Private Lands

55. HRM's authorization of residential developments in other lands within HRM further demonstrates its bias against Annapolis.

56. For example, on October 7, 2014, HRM authorized secondary planning to permit residential development of the former Motherhouse Lands. Those lands are across Highway 102 from the Annapolis Lands, and to the south of Clayton's holdings in Bedford South. A portion of the Motherhouse Lands for which HRM authorized secondary planning was designated "Urban Settlement" in the (then-applicable) 2006

RPS. Indeed, unlike the Annapolis Lands, those lands were not within one of the six areas HRM identified for growth within the life of the 2006 RPS.

57. The development proposal for the Motherhouse Lands, which HRM staff recommended, included, among other things:

- 111 single detached dwellings;
- 9 townhouse dwellings;
- 9 apartment buildings, containing 743 dwelling units; and
- 6 mixed use commercial-residential buildings, containing 830 dwelling units and 5,201 square metres of commercial space.

58. HRM therefore authorized residential development of the Motherhouse Lands while maintaining, as explained below, that the Annapolis Lands should not be developed because there was no need for additional residential development in HRM. By ignoring the growth areas identified in its own 2006 RPS, HRM's conduct with respect to the Motherhouse Lands demonstrates its pattern of bias and discrimination against Annapolis.

Annapolis Seeks to Initiate Secondary Planning of the Lands

59. In September 2007, Annapolis contacted HRM regarding initiating secondary planning of, among other areas, the Annapolis Lands.

60. On October 17, 2007, HRM's Manager of Planning Services responded to Annapolis' inquiry, indicating that HRM had commenced a study to determine the cost of servicing the Annapolis Lands. The study, which was released in February 2009, concluded that there were *no* substantive negative impacts for the development of the

Annapolis Lands, and that infrastructure costs were in line with those of developments of a similar size and nature. In short, there is no reason the Annapolis Lands could not be developed.

61. On July 31, 2009, a corporation acting on behalf of Annapolis and other landowners applied for secondary planning for an area which included the Annapolis Lands. The application explained that most of the public infrastructure required to develop the Annapolis Lands was already in place. Of the infrastructure that needed to be built, Annapolis and the other owners confirmed that they would cover 95% of the costs:

Our financing proposal has the private sector picking up +/- 95% of the costs of growth-related transportation infrastructure and all other costs. The private sector's investments in the project will approach \$2.5 billion. Based upon the 2009 CBCL Cost of Servicing Study, we anticipate that HRM will be responsible for around \$750,000 of the \$12,240,000 in transportation costs listed in this report and based upon the current surrounding road system.

62. HRM and its representatives opposed even initiating secondary planning.

63. On October 21, 2009, HRM staff presented a report to the Regional Plan Advisory Committee which recommended that the decision on secondary planning for the Annapolis Lands be deferred until the (second) five-year review of the 2006 RPS in 2016.

64. HRM staff stated that HRM opposed secondary planning on the basis of the financial impact of development, and the absence of need for additional development in HRM. The report indicated:

It is unreasonable for [HRM] to fund and maintain more infrastructure than is required to accommodate growth. Even under a high growth scenario, the current

supply of suburban lands available for development will satisfy municipal requirements for several decades.

...

Over the intermediate and longer term, the fiscal capacity of [HRM] and Halifax Water to undertake financial initiatives would be adversely affected. Premature investments in additional infrastructure would require deferral of competing higher priority capital projects as both entities have limited debt capacity to finance new projects. In the case of [HRM], for example, Council has identified numerous desirable but as yet unfunded projects such as a new library, additional arenas and recreational facilities and landfill cells.

65. The HRM staff report was deliberately misleading. The assertions in it are belied by HRM's approvals of more costly developments of both other private landowners and of its own lands as described above. Moreover, Annapolis submitted a report from Ernst & Young that responds to HRM staff's October 21, 2009 report. Ernst & Young concluded that the assertions in the HRM staff report concerning the cost of development and availability of other lands were flawed.

66. The real reason that HRM opposed secondary planning was that it wished to maintain the Annapolis Lands as a public park, but without formal zoning which would trigger the compensation obligation in sections 65 and 237 of the *Charter*. Indeed, HRM staff acknowledged the motivation to preserve the Annapolis Lands for a public park in meetings with Annapolis representatives over the months following the October 2009 report.

HRM Requires Redundant Environmental Studies

67. On June 23, 2010, HRM staff submitted a report to the Regional Plan Advisory Committee. The report proposed a three-step process to initiate secondary planning of the Annapolis Lands.

68. First, a watershed study should be completed to determine whether there were environmental constraints on, or impacts from, development of the Annapolis Lands. HRM demanded this study even though the Porter Dillon Report discussed above had been completed fifteen years before in relation to essentially the same issues. Moreover, the 2006 EDM Report had reached the same conclusions as the Porter Dillon Report.

69. Second, HRM and Annapolis (and other private owners) should enter into a facilitation process to set the boundaries of the proposed park (the “**Facilitation**”), which was based upon the mutual understanding that HRM required a portion of the Annapolis Lands for its park, a position which HRM staff confirmed during the Facilitation. The Facilitation explicitly tied development of the Annapolis Lands to HRM’s proposed public park.

70. Third, HRM Council would then consider initiating secondary planning if the two conditions above were satisfied.

71. On August 11, 2010, the Regional Plan Advisory Committee adopted the three-phase recommendation of HRM staff, and on November 16, 2010, HRM Council passed a resolution to adopt the HRM staff recommendation described in the preceding paragraphs hereof.

72. In April 2013, the watershed study was completed. Consistent with both the Porter Dillon Report and the 2006 EDM Report, the watershed study concluded that there were only minimal constraints to serviced development. On July 25, 2013, HRM Council accepted the watershed study.

73. In the summer of 2012, Halifax Water and Annapolis agreed on a wastewater servicing plan for the Annapolis Lands to permit development.

74. In April 2014, the Nova Scotia Utility and Review Board approved an application by the Halifax Regional Water Commission for a wastewater functional plan that included the Annapolis Lands.

75. There thus were not then, and are not now, *any* environmental or servicing constraints on development of the Annapolis Lands.

HRM Staff Attempts to End the Facilitation Before It Begins

76. The second stage of the process suggested by HRM staff and approved by HRM Council was the Facilitation.

77. Annapolis and HRM staff had agreed on the terms of reference of the proposed independent facilitator in November 2011. Nevertheless, it was not until two years later, on September 17, 2013, that HRM Council approved the terms of reference and authorized staff to retain the facilitator.

78. HRM accepted at the outset of the Facilitation that development of the Annapolis Lands was one of the Facilitation's core objectives. The HRM staff report presented to HRM Council on September 17, 2013, which recommended the terms of reference for the Facilitation, expressly stated that one purpose of the Facilitation was the development of the Annapolis Lands:

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 ... [Emphasis added.]

79. On September 17, 2013, HRM Council unanimously passed a resolution to the same effect:

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 ... [Emphasis added.]

80. HRM's first proposed facilitator was a recently-retired executive of Clayton, Annapolis did not accept HRM's proposal.

81. ~~78.~~ On March 14, 2014, HRM and Annapolis agreed that Justice M. Heather Robertson would act as facilitator (the "**Facilitator**").

82. ~~79.~~ In late August 2014, even before the Facilitation before Justice Robertson began, HRM staff advised Annapolis that HRM would be unlikely to agree on park boundaries. Accordingly, HRM staff suggested that it would seek instructions from HRM Council not to proceed with negotiations at all.

83. ~~80.~~ In response, Annapolis requested that HRM participate in good faith in the Facilitation as adopted in the Facilitator's terms of reference.

84. ~~81.~~ HRM staff nonetheless sought HRM Council's approval to end the Facilitation before it began. It is significant that HRM staff sought approval to end the Facilitation in relation to the Annapolis Lands a few weeks before it recommended that

HRM Council authorize secondary planning for the Motherhouse Lands, which added residential development adjacent to the Annapolis Lands, as outlined above.

85. ~~82.~~ Annapolis wrote to HRM Council regarding HRM staff's request to terminate the Facilitation as follows:

The abrupt unilateral action of [HRM] Staff to kill the process before even having one single substantive meeting with the jointly appointed Facilitator regardless of the consequences to [Annapolis] constitutes actionable bad faith. Having directed a facilitated negotiation and effectively delayed [Annapolis'] applications for four years only to abort the process unilaterally on the eve of its scheduled commencement cannot be characterized otherwise.

Failure to proceed with the process will deprive Council of exploring what can be achieved in the way of parkland acquisition and access to the parkland at no cost or what could be purchased or otherwise acquired at a negotiated price.

The cancellation of the facilitation, quite apart from exposing Halifax Regional Municipality to liability, serves no useful purpose in advancing the objectives of the Regional Planning Strategy. This includes not only permitting development to proceed but also establishing the boundaries for the regional parkland. The cost of acquiring additional private lands for regional parkland will only appreciate over time.

[Annapolis] cannot fathom the basis upon which Halifax Regional Staff has made this recommendation to Council. We would, on behalf of [Annapolis], strongly urge that Council direct Staff to resume the facilitated negotiation process put in place by Regional Council in November, 2010. [Emphasis added.]

86. ~~83.~~ HRM Council instructed staff to proceed with the Facilitation.

~~HRM Council Disregards the Facilitation Process and Rejects Secondary Planning~~

HRM Fails to Participate in the Facilitation in Good Faith

87. ~~84.~~ The Facilitation occurred over approximately the next eighteen months and included eight formal meetings among representatives of HRM and Annapolis and the Facilitator, as well as a number of informal meetings in the Facilitator's absence.

~~HRM failed to act in good faith in respect of the Facilitation.~~ At all times, Annapolis has been willing to sell its lands to HRM at a mutually-acceptable price as part of negotiated resolution.

88. ~~85.~~ Annapolis prepared a detailed plan for the development of the Annapolis Lands and boundaries for the regional park (the “**Development Plan**”). To generate the Development Plan, Annapolis, at considerable expense, commissioned independent engineering consultants in collaboration with land use planners, to prepare a master plan that allowed for commercial, residential and park development and included preliminary designs and costing for all necessary infrastructure such as storm water, sewer and water services along with roads. Throughout the Facilitation, Annapolis modified the Development Plan as a result of collaboration with HRM staff and the final Development Plan discussed below reflected that input.

~~86. HRM staff prepared an alternative plan for the area, which was embodied in Map 3A. Map 3A showed a regional park boundary that would dedicate the western portion of the Annapolis Lands to parkland which HRM would be required to acquire. The remaining eastern portion of the Annapolis Lands would require secondary planning to be developed.~~

89. At the formal meeting on June 23, 2015, HRM staff acknowledged that development of the Annapolis Lands could occur without significant costs to HRM. This acknowledgment is reflected in the Facilitator’s final report as stated below at paragraph 101.

90. Toward the end of 2015, Annapolis representatives had discussions with HRM parks staff to negotiate boundaries for the park. Working together, Annapolis representatives and HRM parks staff reached consensus on the boundaries HRM required for a park. Those boundaries would leave HRM with a substantial park and Annapolis with an economically-viable development. The parties therefore had made significant progress with the negotiations.

91. However, at the very next meeting – and with no explanation given – HRM staff resiled from those boundaries and instead presented a radically different plan for the area. HRM's presentation was embodied in Map 3A. Map 3A showed regional park boundaries that included large portions of the Annapolis Lands that had not been identified by HRM park staff as required for park purposes and which HRM would be required to purchase from Annapolis. The remaining eastern portion of the Annapolis Lands would require secondary planning to be developed.

92. Because HRM staff refused to engage in further negotiations, the Facilitation reached an impasse. The Facilitator determined that the only way forward was to seek further instruction from HRM Council.

93. The Facilitator issued an interim report to HRM Council on February 12, 2016. In explaining the rationale for her request of HRM Council, she wrote:

[Counsel for the parties] 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 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, [Map 3A] 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.

94. The Facilitator indicated that HRM staff did not consider HRM's fiscal considerations, the economics of the development of the park, and the economics to Annapolis (and the other developers) with respect to development of the private 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 Highway 102 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 the development of the park, and the economics to the landowners of development of the private lands. [Emphasis added.]

95. At an *in camera* meeting held on March 22, 2016, HRM Council instructed HRM staff to move forward to a final report and public consultation based upon the Development Plan.

96. HRM staff did not engage in further substantive negotiations with Annapolis.

97. HRM failed to act in good faith in respect of the Facilitation.

HRM Council Disregards the Facilitation Process and Rejects Secondary Planning

28. ~~87.~~ Both the Development Plan and Map 3A were submitted to the public, together with the final report of the Facilitator, in September 2016.

29. ~~88.~~ Justice Robertson released her final report to HRM Council dated June 1, 2016. In her report, the Facilitator indicated that HRM “cannot delay indefinitely while not permitting the development of the lands” (emphasis added).

100. ~~89.~~ Justice Robertson, observed, among other things, the following features in connection with Annapolis’ Development Plan:

- The original concept boundary for the Regional park contained in the [2014 RPS] does not take into account the economics of opening the lands up for public access. The landowners estimate an investment of \$30 million in infrastructure is required to open the park to public access and their lands to development. This level of investment requires a certain scale of development to be economic.
 - Development in the vicinity of the park will provide users to both the regional park and the provincial wilderness park and will facilitate through private investment the opening of public access points to the park and to the Birch Cove Lakes.
- ...
- 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.
 - Development of the private lands will utilize existing public facilities ... 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.

...

- 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.

...

Setting the regional park boundaries as proposed by the landowners in the Development Plan achieves regional park objectives and is economically feasible. [Emphasis added.]

101. ~~90.~~ Justice Robertson's final report confirms that HRM staff acknowledged that the Annapolis Lands could be developed without significant investment by HRM:

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. [Emphasis added.]

102. ~~91.~~ Justice Robertson stated that the park boundaries contained in the 2014 RPS "[do] not take into account the economics of opening the lands up for public access" (emphasis added). Justice Robertson disagreed with HRM staff's position that Annapolis' Development Plan failed to meet the objectives of the proposed park. She stated that in assessing whether boundaries meet the park's objectives, one "must take into account the cost of achieving those objectives."

103. ~~92.~~ Annapolis highlighted the absence of consideration of economics in a letter to HRM following the Facilitation before Justice Robertson:

Noticeably absent from the discussions and as noted by the Facilitator was any consideration by HRM of the specific economic implications upon our clients of any proposed changes to the park boundary, any account of HRM's fiscal

considerations, the economics of park development, and the economics to the landowner of developing its privately held lands. Furthermore, HRM did not identify any land trades or provincial municipal partnerships which could be used as a means of acquiring parkland which it required. [Emphasis added.]

104. ~~93.~~ On July 26, 2016, HRM Council directed staff to prepare a report regarding the Facilitation and to release it to the public, along with Map 3A.

105. ~~94.~~ On September 6, 2016 – some nine years after Annapolis’ original application to initiate secondary planning – HRM staff presented the report to HRM Council. The report recommended that HRM take no further action in response to the Facilitator’s recommendations and that HRM refuse Annapolis’ request to initiate secondary planning of the Annapolis Lands.

106. The HRM staff report also recommended that HRM Council reject ~~rejected~~ both the Development Plan and ~~HRM staff’s own~~ Map 3A ~~proposal~~, which HRM staff had presented at the Facilitation as described in paragraph 91 above. Annapolis had supported Map 3A to move the process forward if the Development Plan was rejected. Despite Annapolis’s willingness to compromise and accept Map 3A, remarkably, HRM staff characterized Annapolis as an “unwilling seller”.

107. ~~95.~~ On September 6, 2016, HRM Council adopted HRM staff’s recommendations. It passed the following three separate resolutions:

Resolution #1:

Receive the Facilitator’s Report Regarding Negotiation of the Proposed Boundaries for the Blue Mountain/Birch Cove Lakes Regional Park in relation to the Highway 102 West Corridor and take no further action concerning the facilitation process or the report’s recommendations.

Resolution #2:

Refuse the request to initiate secondary planning for all Hwy 102 West Corridor lands at this time.

Resolution #3:

Direct staff to explore opportunities and develop a program to acquire land to establish the proposed Blue Mountain – Birch Cove regional park, with a priority of providing public access to the provincially protected wilderness area, that includes, but is not limited to:

Discussions with the Federal and Provincial governments;

Discussions with all private land owners that own property located within the conceptual park boundary in Map 11 of the Regional Plan;

Discussions with land conservation and community groups; and

Reviewing the potential use of land use planning tools and conservation easements.

Staff is further directed to report back to Regional Council within six (6) months and then on an annual basis, staff to report to Council on progress achieved in implementing the established Blue Mountain/Birch Cove Regional Park.
[Emphasis added.]

108. ~~96.~~ After passing these resolutions, HRM Council did not consider a resolution: (a) to establish the regional park boundaries in accordance with Map 3A, despite HRM's having presented Map 3A during the Facilitation, and (b) proceed to secondary planning with the remaining portions of the Annapolis Lands.

109. ~~97.~~ HRM Council's September 6, 2016 resolutions have the following results: (a) the Annapolis Lands are taken as a park without compensation to Annapolis and without HRM's being subject to the statutory one year constraint in subsection 237(2) of the *Charter*; and (b) despite being zoned "Urban Settlement", the Annapolis Lands cannot be developed.

110. ~~98.~~ HRM Council and staff have thus acted in bad faith, abusing a public office, throughout this entire decade-plus matter.

HRM Has *De Facto* Expropriated the Lands as a Park Without Compensation

111. ~~99.~~ Based on the facts above, HRM has *de facto* expropriated the Annapolis Lands for public use as a park. HRM has delayed and obstructed all of Annapolis' attempts to develop the Annapolis Lands, and likewise, has deliberately avoided expressly zoning the Annapolis Lands to avoid its compensation obligation. In doing so, it has obtained the use of the Annapolis Lands as a public park, and has deprived Annapolis of any use of the Annapolis Lands.

112. ~~100.~~ Indeed, HRM encourages members of the public to use the Annapolis Lands as a park. In addition to a variety of other outdoor activities, members of the public hike, cycle, canoe, camp, and swim on the Annapolis Lands as if HRM held the Annapolis Lands as a park. The 2006 EDM Report acknowledged these uses:

The Study Area [which included the Annapolis Lands] is regularly used for recreation with well established, if unofficial, walking, hiking, and mountain biking trails. With the exception of the BLT Trail, a Rails to Trails project undertaken by the Beechville / Lakeside / Timberlea community with the assistance of HRM and the Province, no trail has a Letter of Authority from [the Nova Scotia Department of Natural Resources] recognizing the right-of-way for trails purposes. To the best of our knowledge, none of the trails on private lands within the Study Area is endorsed by any owner. [Emphasis added.]

113. ~~101.~~ HRM facilitates public access to the Annapolis Lands by encouraging and/or permitting parking on the west side of Highway 102. HRM does not enforce no-parking regulations, even though such parking is a safety risk to motorists and individuals exiting vehicles to enter onto the Annapolis Lands.

114. ~~102.~~ In addition, HRM has unilaterally taken the Annapolis Lands as a contiguous park with the adjacent Wilderness Area. The public almost exclusively accesses the Wilderness Area through use of the Annapolis Lands, and HRM nonetheless encourages the use of the Wilderness Area. In making statements to encourage the use of the Wilderness Area, HRM and its representatives know that they are encouraging use of the Annapolis Lands by the public as a single regional park consistent with Map 11.

115. ~~103.~~ HRM and its representatives have also made public statements to indicate that the Annapolis Lands are already set aside as a public park, and that Annapolis' efforts to develop the Annapolis Lands are illegitimate.

116. ~~104.~~ Because of the conduct of HRM and its representatives, a substantial portion of the HRM public believes that the Annapolis Lands have already been designated as a public park, and/or that the Annapolis Lands cannot ever be developed because they are set aside as a public park.

117. ~~105.~~ By virtue of the foregoing, Annapolis is entitled to compensation. First, HRM acquired a beneficial interest in the Annapolis Lands in exercise of statutory authority under Part VIII of the *Charter*. Second, HRM's acquisition caused the removal of all reasonable uses of the Annapolis Lands for Annapolis. As particularized at paragraphs 9 to 15 above, the only reasonable uses of the Annapolis Lands are for development. Third, HRM's conduct amounts to a taking of land by an expropriating authority without the consent of the private owner, Annapolis, pursuant to the definition of "expropriate" in section 3(1)(c) of the *Expropriation Act*, such that HRM is obligated to follow the process detailed in the statute and to compensate Annapolis pursuant to

sections 6 and 24 of the *Expropriation Act*. In any event, the *Charter* cannot be interpreted to authorize acquisition of private land by HRM without compensating the owner as a matter of statutory interpretation. Indeed, section 65 of the *Charter* expressly provides that HRM's acquisitions of private land are subject to the *Expropriation Act*.

HRM has been Unjustly Enriched

118. ~~106.~~ HRM has been unjustly enriched at the expense of Annapolis by obtaining a public park on the Annapolis Lands without paying Annapolis compensation. First, HRM was unjustly enriched by obtaining a public park on the Annapolis Lands. Second, there was a corresponding deprivation to Annapolis because Annapolis was precluded from developing the Annapolis Lands without compensation. Third, there was no juristic reason for the enrichment, because HRM deliberately avoided the expropriation process prescribed by sections 65 and 237 of the *Charter* and the *Expropriation Act*, by which HRM could obtain the Annapolis Lands as a park through the payment of compensation to Annapolis. Annapolis is therefore entitled to restitution in the form of a monetary remedy reflecting the value of the Annapolis Lands of which it was unjustly deprived.

119. ~~107.~~ In addition, and in the alternative, HRM has been enriched by obtaining improvements on the Annapolis Lands, including, for example, maintenance and upgrades to the dam system in excess of \$5 million since 2006. Annapolis suffered a corresponding deprivation since it alone paid for those improvements, and received no compensation for them from HRM. There is no juristic reason for HRM's enrichment. Accordingly, Annapolis is entitled to compensation for the value of these improvements.

HRM and its Representatives Abused their Public Offices

120. ~~108.~~ HRM and its representatives, for whom HRM is both directly and vicariously liable, have abused their public offices by engaging in deliberate unlawful conduct in the exercise of public functions with the awareness that the conduct was unlawful and likely to injure Annapolis. HRM and its representatives committed these abuses of public office in two ways.

121. ~~109.~~ First, as particularized at paragraphs 6 to ~~98~~ 110 above, HRM and its representatives have refused to initiate secondary planning of the Annapolis Lands and/or the statutory process to expropriate the Annapolis Lands with the specific intention of injuring Annapolis.

122. ~~110.~~ Second, as particularized at paragraphs 6 to ~~98~~ 110 above, HRM and its representatives engaged in several deliberate unlawful acts not authorized by the *Charter* or other statute, including:

(a) acquiring the Annapolis Lands without complying with the statutory process to expropriate them under sections 65 and 237 of the *Charter* and the *Expropriation Act*;

(b) acting in bad faith by reason of the foregoing, as well as by refusing to initiate secondary planning of the Annapolis lands under the *Charter*;

(c) discriminating and exhibiting bias against Annapolis by favouring HRM's own developments and those of other private owners, including Clayton, without authorization under the *Charter*; and

(d) breaching the duties of procedural fairness and natural justice owed to Annapolis in the processes followed to acquire the Annapolis Lands, including by establishing procedures such as the Facilitation before Justice Robertson that HRM had no intention of following, and by failing to disclose HRM's true intentions to Annapolis regarding the public park and giving Annapolis an opportunity to respond.

123. ~~111.~~ HRM knew that these acts were unlawful and that they were likely to harm Annapolis.

124. ~~112.~~ These abuses of public office were the legal cause of compensable injury to Annapolis because they deprived it of the value of the Annapolis Lands without compensation.

Statutes Pleaded

125. ~~113.~~ Annapolis pleads and relies upon the following statutes:

- (a) *Expropriation Act*, R.S.N.S. 1989, c. 156;
- (b) *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39;
- (c) *Interest on Judgements Act*, R.S.N.S. 1989, c. 233;

Relief Sought

126. ~~114.~~ As a result of the foregoing, Annapolis requests:

- (a) Constructive or *de facto* expropriation:
 - (i) A declaration that HRM has constructively or *de facto* expropriated the Annapolis Lands;
 - (ii) An order requiring HRM to pay Annapolis for the value of the Annapolis Lands in the amount of \$119,300,000 or \$80,829 per acre plus development proceeds, being the amount at which the Annapolis Lands were valued by an independent valuator in 2014;
 - (iii) In the alternative, an order requiring HRM to pay Annapolis for the value of the Annapolis Lands in the amount of \$77,999,985 or

\$80,829 per acre, being the amount at which the Annapolis Lands were valued by an independent valuator in 2014;

- (iv) In the further alternative, an order requiring HRM to pay Annapolis the value of the Annapolis Lands as determined by the Court.
 - (v) An order requiring HRM to pay Annapolis for the value of the improvements Annapolis has made to the Annapolis Lands, including but not limited to dam upgrades and maintenance, in an amount to be provided prior to the trial of this action.
- (b) Unjust enrichment:
- (i) A declaration that HRM has been unjustly enriched by the use of the Annapolis Lands;
 - (ii) An order requiring HRM to pay Annapolis for the value of the Annapolis Lands in the amount of \$119,300,000 or \$80,829 per acre plus development proceeds, being the amount at which the Annapolis Lands were valued by an independent valuator in 2014;
 - (iii) In the alternative, an order requiring HRM to pay Annapolis for the value of the Annapolis Lands in the amount of \$77,999,985 or \$80,829 per acre, being the amount at which the Annapolis Lands were valued by an independent valuator in 2014;
 - (iv) In the further alternative, an order requiring HRM to pay Annapolis the value of the Annapolis Lands as determined by the Court;
 - (v) In the further alternative, an order requiring HRM to initiate the statutory process to expropriate the Annapolis Lands pursuant to the *Expropriation Act*;

- (vi) An order requiring HRM to pay Annapolis for the value of the improvements Annapolis has made to the Annapolis Lands, including but not limited to dam upgrades and maintenance, in an amount to be provided prior to the trial of this action.
- (c) Abuse of, or misfeasance in, public office:
 - (i) A declaration that HRM and its representatives have committed the tort of abuse of, or misfeasance in, public office in respect of Annapolis;
 - (ii) An order requiring HRM to pay Annapolis for the value of the Annapolis Lands in the amount of \$119,300,000 or \$80,829 per acre plus development proceeds, being the amount at which the Annapolis Lands were valued by an independent valuator in 2014;
 - (iii) In the alternative, an order requiring HRM to pay Annapolis for the value of the Annapolis Lands in the amount of \$77,999,985 or \$80,829 per acre, being the amount at which the Annapolis Lands were valued by an independent valuator in 2014;
 - (iv) In the further alternative, an order requiring HRM to pay Annapolis the value of the Annapolis Lands as determined by the Court.
 - (v) An order requiring HRM to pay Annapolis for the value of the improvements Annapolis has made to the Annapolis Lands, including but not limited to dam upgrades and maintenance, in an amount to be provided prior to the trial of this action.
- (d) An order requiring HRM to pay pre-judgment and post-judgment interest; and
- (e) Costs of this action on a solicitor-client basis.

SignatureSigned March 22, 2017

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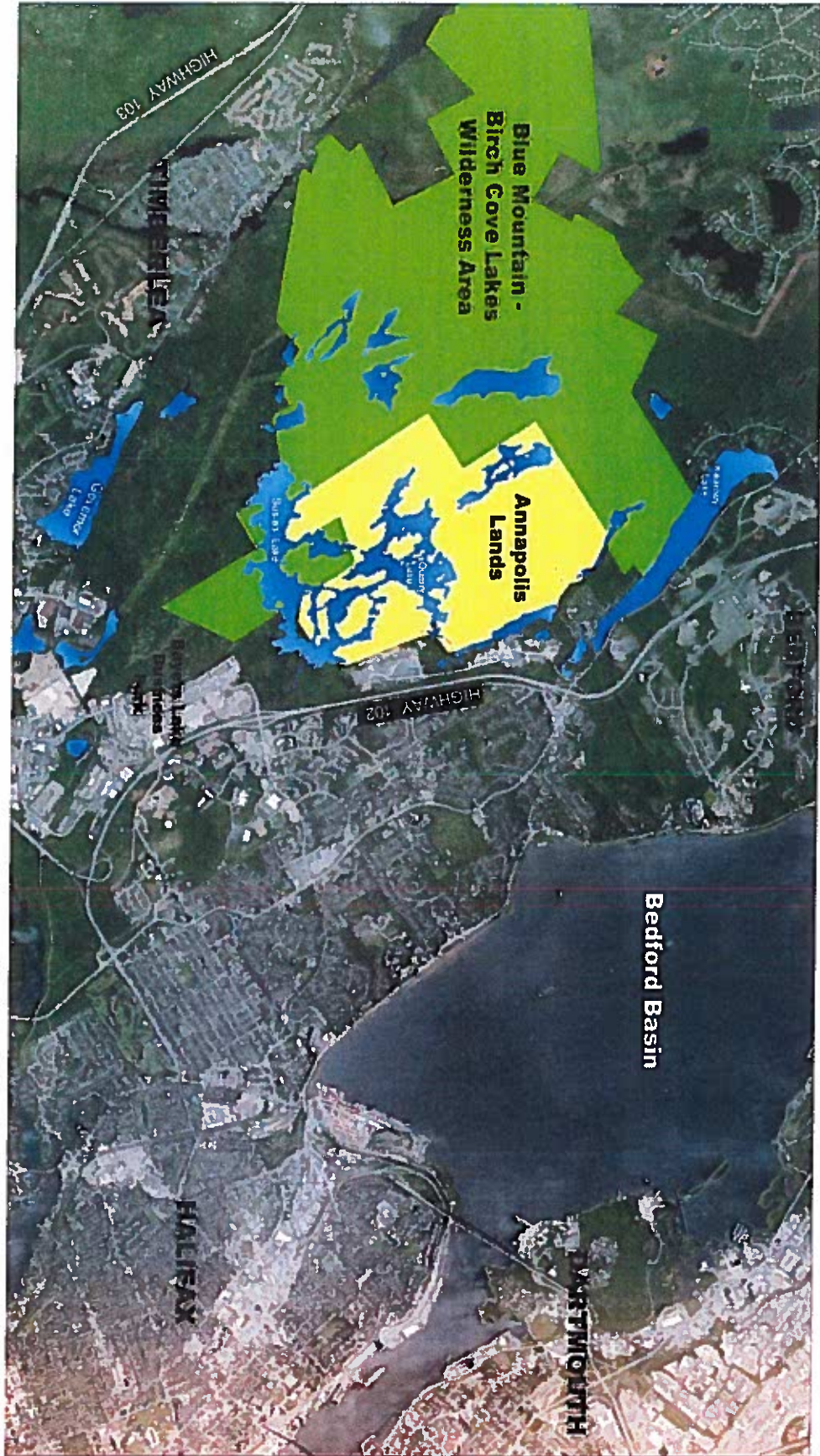
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~~APPENDIX "A"~~



~~APPENDIX "B"~~

