

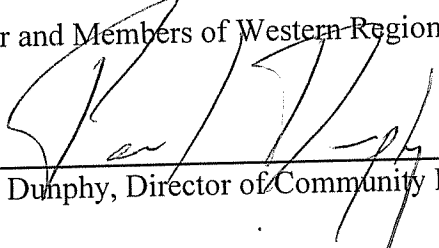


PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Western Region Community Council
July 26, 2010

10.1.2

TO: Chair and Members of Western Region Community Council

SUBMITTED BY: 
Paul Dunphy, Director of Community Development

DATE: July 9, 2010

SUBJECT: Case 01312 - Revised Amending Agreement - Brunello Estates
Subdivision (formerly Westgate Community), Timberlea

SUPPLEMENTARY REPORT

ORIGIN

- Application by Nine Mile River Investments Ltd.
- Staff report dated February 4, 2010.
- Approval by Western Region Community Council on February 22, 2010.
- Request for revised wording by Nine Mile River Investments Ltd.

RECOMMENDATION

It is recommended that Western Region Community Council:

1. By resolution, approve the revised non-substantive amendment to the Brunello Estates Subdivision (formerly Westgate Community) development agreement for Phase 1, as detailed in the Fifth Amending Agreement presented as Attachment A to this report; and
2. Require that the Fifth Amending Agreement be signed by the property owner within 120 days, or any extension thereof granted by Council on request of the property owner, from the date of final approval by Council and any other bodies as necessary, including applicable appeal periods, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

In December 2001, the Western Region Community Council approved a development agreement with Nine Mile River Investments Ltd. to allow for a new mixed use project in Timberlea. Known as "Westgate" at the time, the project, now Brunello Estates, would incorporate a golf course among residential, commercial and institutional developments over 500 acres of land extending from Hwy. 103 to St. Margaret's Bay Road on both sides of Timberlea Village Parkway (refer to Map 1).

Several amendments to the agreement have been approved since that time and a small amount of residential development has been constructed. The project, however, has largely been on hold pending a resolution of sewage treatment issues. Due to capacity constraints that were anticipated at the time, the original 2001 development agreement limited development to a maximum of 900 dwelling units and later 911 units, until a resolution and method of funding sewage treatment improvements could be found. Since that time, the following provides a chronology of the issues related to sewage treatment and their effect on the Brunello Estates development:

- In 2004, Nova Scotia Environment informed HRM that provincial regulations would not support our plans to expand the Timberlea sewage treatment plant.
- In 2005, to acknowledge development proposals that were in various stages of subdivision approval, the Province confirmed that only 180 units from Westgate/Brunello could be approved until a solution to the treatment plant expansion is determined.
- In 2006, Regional Council endorsed a proposal to divert a portion of the sewage generated within the Timberlea/Lakeside/Beechville service boundary to the Halifax sewer system.
- In 2007, in recognition of HRM's responsibility to provide wastewater services in the Timberlea/Lakeside/Beechville service boundary, the Brunello development agreement was amended to remove the 911 unit limitation as the trigger for the upgrade of the sewage treatment plant.
- In 2007, with Halifax Water assuming responsibility for sewage treatment, that agency became responsible for completing the necessary system improvements.
- Presently, Halifax Water continues to work on identifying acceptable system improvements in consultation with NS Environment. Due to new regulations, the improvements may involve the diversion of sewage to the Halifax system **or** an upgrade to the Timberlea treatment plant. An agreed servicing solution is expected within the next year with approximately two years of construction to follow. In the meantime, Nova Scotia Environment still maintains the 180 unit restriction for the Brunello development.

As the 180 unit restriction imposed by the Province has never been formalized in the development agreement, it was proposed to be added along with requirements for tracking of the number of units. Subsequent to approval of the amending agreement by WRCC in February, the developer expressed concerns with the wording of the clause related to the 180 units. He agrees that the 180 unit

restriction is valid but does not want it to be misconstrued by others as a limitation similar to the previous 911 unit limit.

DISCUSSION

To address the developer's concerns relative to the wording of the 180 unit clause, a discrete area of development comprising a total of 180 units has been identified as the only area which may be developed prior to the identification of a sewage treatment solution. The following revised wording is proposed:

Proposed wording:

2.2.1.1 The Developer agrees that in respect to the Maple Grove Phase attached as Schedule S, it shall only request Building Permits to be issued for a maximum of 180 units until such time as wastewater servicing management plan meeting the requirements of Halifax Water and Nova Scotia Environment is in place for the Timberlea, Lakeside and Beechville communities. The Developer agrees to provide, with each Building Permit application, a tracking sheet identifying the location and number units previously receiving Building Permits, the location and number of units currently applying for Building Permits and the balance remaining until the 180 unit limit is reached.

The previous wording contained in the February 2010 staff report is as follows:

Previous wording:

2.2.1.1 Building Permits shall only be issued for a maximum of 180 units until a waste water solution meeting Nova Scotia Environment's requirements has been achieved or a wastewater servicing management plan, acceptable to Halifax Water and NSE, has been agreed to. To this end, the Developer shall provide, with each Building Permit application, a tracking sheet identifying the location and number of units previously receiving Building Permits and the location and number of units currently applying for Building Permits as well as the remaining number of units until the 180 unit cap is reached.

With the exception of the revised wording of clause 2.2.1.1, the agreement is the same as the one which was approved by WRCC on February 22, 2010. Staff therefore recommend that the revised fifth amending agreement, presented as Attachment A to this report, be approved.

BUDGET IMPLICATIONS

There are no budget implications. The Developer will be responsible for all costs, expenses, liabilities and obligations imposed under or incurred in order to satisfy the terms of this Agreement. The administration of the agreement can be carried out within the approved budget with existing resources.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

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

COMMUNITY ENGAGEMENT

Given the technical nature of this application, a Public Information meeting was not held. The amending agreement can be approved by resolution of Council; no public hearing is required.

ALTERNATIVES

1. Community Council may choose to approve the proposed revised non-substantive fifth amending agreement appended as Attachment A.
2. Community Council may choose to approve the proposed revised non-substantive fifth amending agreement with modifications or conditions. Some modifications or conditions may be outside the scope of a non-substantive amendment and may require a substantive amendment to the development agreement.
3. Community Council may choose to refuse the proposed revised non-substantive fifth amending agreement. Reasons must be provided for a refusal, based on policies of the MPS.

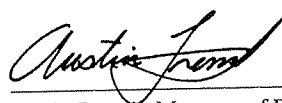
ATTACHMENTS

Map 1	Location
Attachment A	Amending Agreement
Attachment B	New Phase 1 Draft Lot Configuration

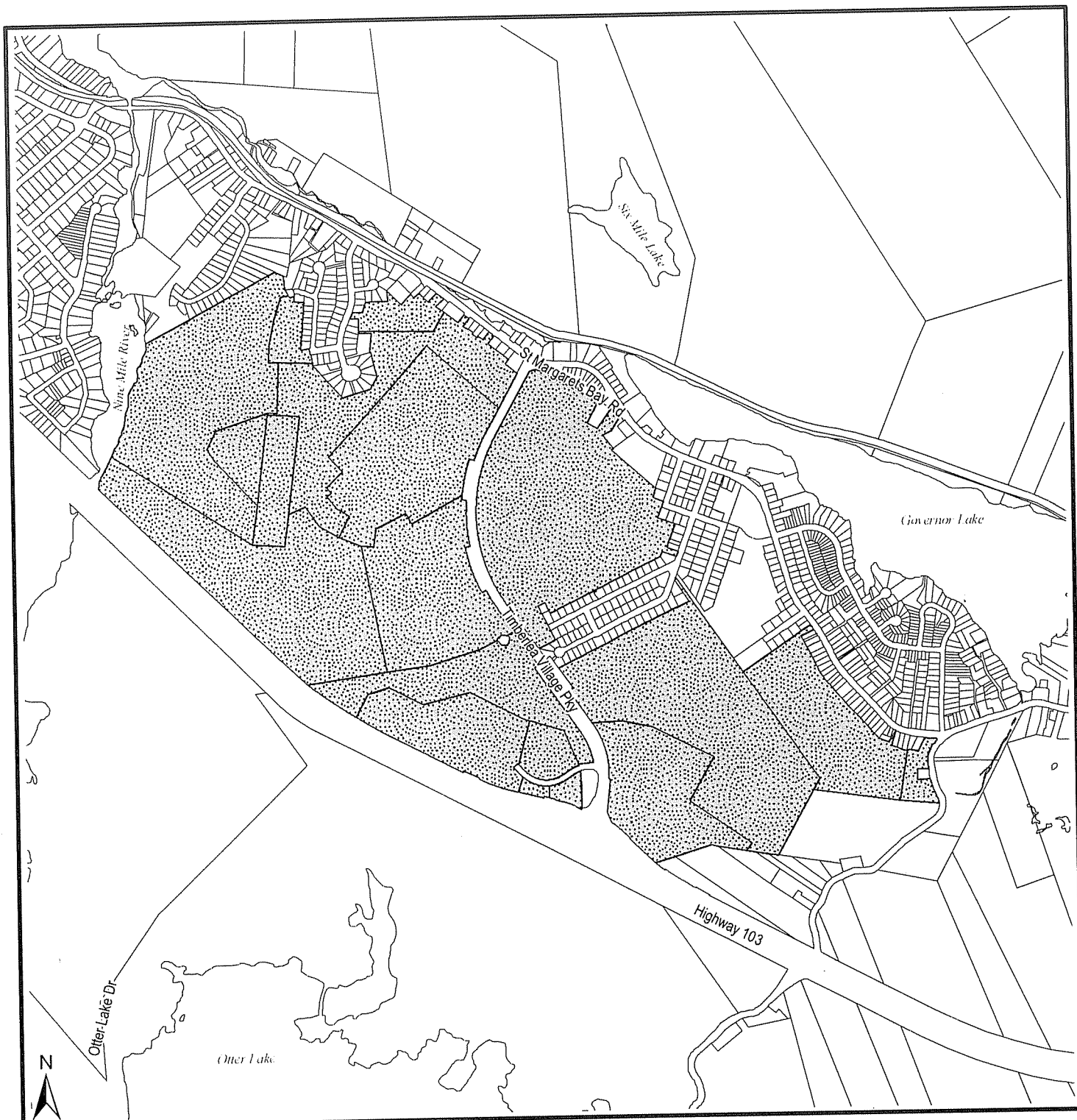
A copy of this report can be obtained online at <http://www.halifax.ca/commcoun/cc.html> then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by : Kelly Denty, Supervisor, Planning Applications, 490-6011

Report Approved by:



Austin French, Manager of Planning Services, 490-6717



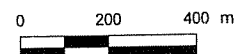
Map 1 - Location

Brunello Estates
Timberlea



Area under development agreement

HALIFAX
REGIONAL MUNICIPALITY
COMMUNITY DEVELOPMENT
PLANNING SERVICES



Timberlea/Lakeside/Beechville Plan Area

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

ATTACHMENT A

THIS FIFTH AMENDING AGREEMENT made this day of , 2010,
BETWEEN:

NINE MILE RIVER INVESTMENTS LIMITED
a body corporate, in the Halifax Regional Municipality,
Province of Nova Scotia ("the Developer")

OF THE FIRST PART

- and -

HALIFAX REGIONAL MUNICIPALITY,
a municipal body corporate, in the Province of Nova Scotia
("the Municipality")

OF THE SECOND PART

WHEREAS the Developer is the registered owner of certain lands located within Timberlea and which said lands are more particularly described in Schedule A of this Agreement ("the Lands");

AND WHEREAS the Western Region Community Council of the Municipality ("the Community Council") approved an application by the Developer to enter into a development agreement (municipal reference number 00265) to allow for a mixed use community with a golf course on the Lands, which said development agreement was registered at the Registry of Deeds in Halifax on February 14, 2002 as Document Number 6552 in Book 6969 at Pages 933 to 993 ("the Agreement");

AND WHEREAS the Community Council approved certain amendments to the Agreement requested by the Developer (municipal reference number 00590) which were recorded at the Registry of Deeds in Halifax on August 22, 2003 as Document Number 37295 in Book 7458 at Pages 107 to 118 ("the First Amending Agreement");

AND WHEREAS the Community Council approved further amendments to the Agreement (municipal reference number 00623) which were recorded at the Registry of Deeds in Halifax on April 21, 2004 as Document Number 75364217 in Book 7667 in Pages 906 to 921 ("the Second Amending Agreement");

AND WHEREAS the Community Council approved further amendments to the Agreement (municipal reference number 00536) which were recorded at the Registry of Deeds in Halifax on July 15, 2004 as Document 75884560 in Book 7797 in Pages 156 to 162 ("the Third Amending Agreement");

AND WHEREAS the Community Council approved further amendments to the Agreement (municipal reference number 01040) which were recorded at the Halifax County Land Registration Office in Halifax on January 22, 2008, as Document 91321258 ("the Fourth Amending Agreement");

AND WHEREAS the Developer requested further amendments to the Agreement (municipal file number 01312) which were approved by the Community Council on (enter date of decision);

THEREFORE in consideration of the benefits from the covenants contained herein, the Parties agree that the Agreement, as previously amended ("the Amended Agreement"), is further amended as follows:

1. Amend Section 2.1 to add the following to the end of the list of Schedules:

Schedule J	Golf Course Community Plan
Schedule K	Community Concept Plan
Schedule L	Building Height Areas
Schedule M	Recreation Facilities
Schedule N	Road Hierarchy
Schedule O	Sanitary Sewer Servicing Schematic
Schedule P	Water Servicing Schematic
Schedule Q	Conceptual Storm Water Management Plan
Schedule R	Non-Site Disturbance Areas
Schedule S	Maple Grove Phase

2. Amend Section 2.1 to add the following immediately after the list of Schedules:

- 2.1.1 Notwithstanding Section 2.1, the new Schedules J to S inclusive apply to Phase 1 only and supercede only the Phase 1 portion of Schedules B1, B2, B3, C, D, F, G, H1 and I respectively.

3. Amend Section 2.2 to add the following immediately after 2.2.1 (f):

- 2.2.1.1 The Developer agrees that in respect to the Maple Grove Phase attached as Schedule S, it shall only request Building Permits to be issued for a maximum of 180 units until such time as wastewater servicing management plan meeting the requirements of Halifax Water and Nova Scotia Environment is in place for the Timberlea, Lakeside and Beechville communities. The Developer agrees to provide, with each Building Permit application, a tracking sheet identifying the location and number of units previously receiving Building Permits, the location and number of units currently applying for Building Permits and the balance remaining until the 180 unit limit is reached.

4. Amend Section 2.3 to add the following immediately after 2.3.6:

2.3.7 Phase 1 shall be developed in accordance with Schedules J to S inclusive as attached hereto.

2.3.8 Notwithstanding Section 2.3.7, all sections of the Amended Agreement which apply to the Lands identified as Phase 1 shall continue to apply.

5. New Schedules J to S inclusive, attached hereto, shall be inserted into the revised Amended Agreement immediately after Schedule I.

All other terms and conditions of the Amended Agreement shall remain in effect.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, 2010.

SIGNED, SEALED AND DELIVERED
in the presence of

SEALED, DELIVERED AND
ATTESTED to by the proper
signing officers of Halifax Regional
Municipality duly authorized
in that behalf in the presence
of

) NINE MILE RIVER INVESTMENTS LTD.

)

) Per: _____

)

)

)

)

)

)

) _____
HALIFAX REGIONAL MUNICIPALITY

)

) Per: _____

)

)

) Per: _____

)

MAYOR
MUNICIPAL CLERK



DRAFT LOT CONFIGURATION

Potential Watercourse
(to be confirmed by NSE)



Wetland

RESIDENTIAL

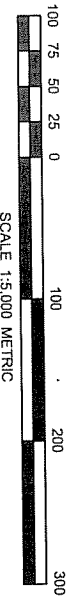
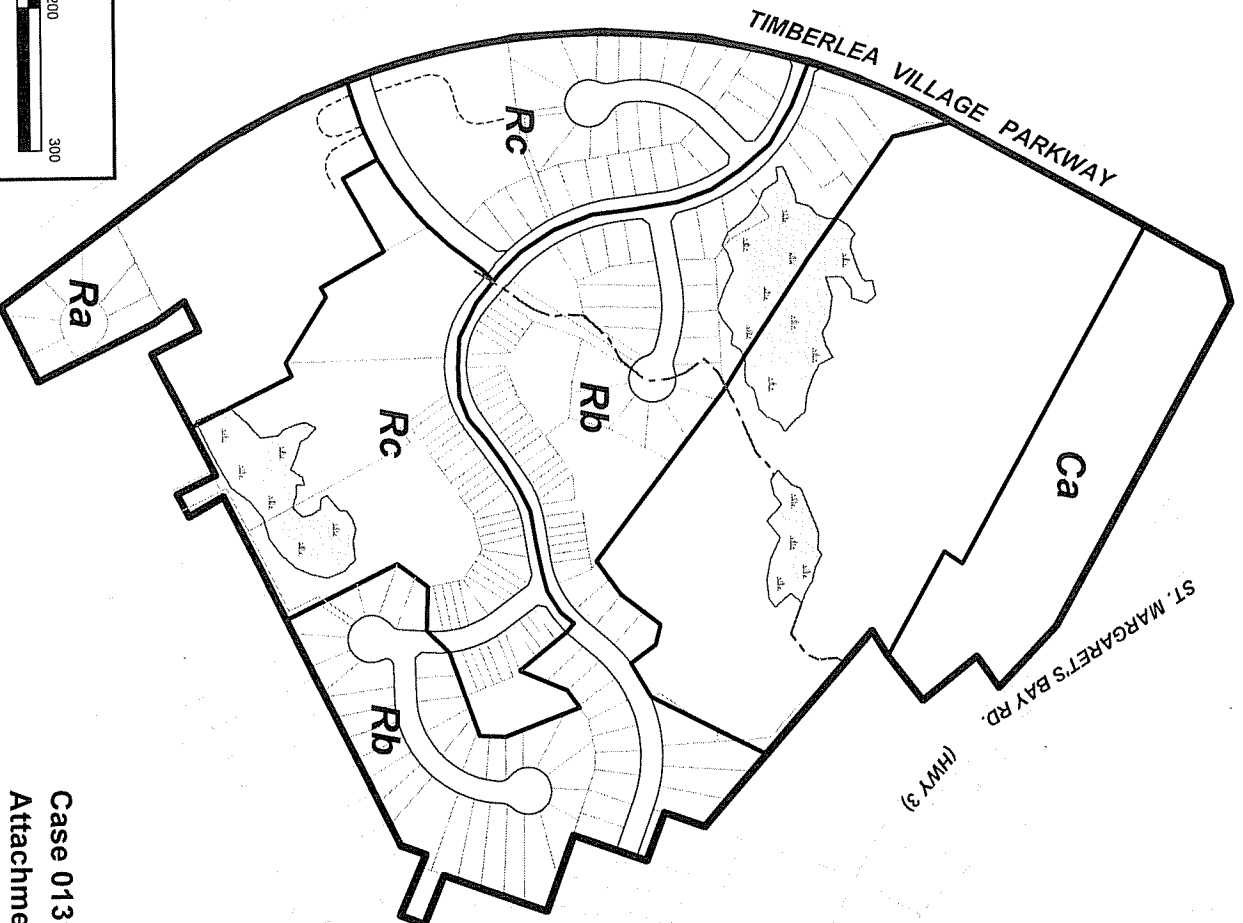
Ra
Single family homes with up to 20% townhomes and alternate housing types

Rb
Single family homes with up to 60% townhomes and alternate housing types

Rc
Mixed residential: townhomes, alternate housing types, multiple unit dwellings and single family homes

COMMERCIAL

Ca
Commercial Use

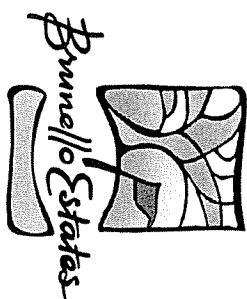


SCALE 1:5,000 METRIC

January 21, 2010

SOURCE BASE PLAN: EDM SCHEDULE B1, DATED MAY 29, 2003

Case 01312
Attachment B



SCHEDULE J

Golf Course Community Plan

Approximate Golf
Safety Margin

TIMBERLEA VILLAGE PARKWAY

ST. MARGARET'S BAY RD.
(HWY 3)

5

6

9

8

7

10

12

January 21, 2010

SCALE 1:5,000 METRIC



SOURCE BASE PLAN: EDM SCHEDULE B1, DATED MAY 29, 2003





SCHEDULE K

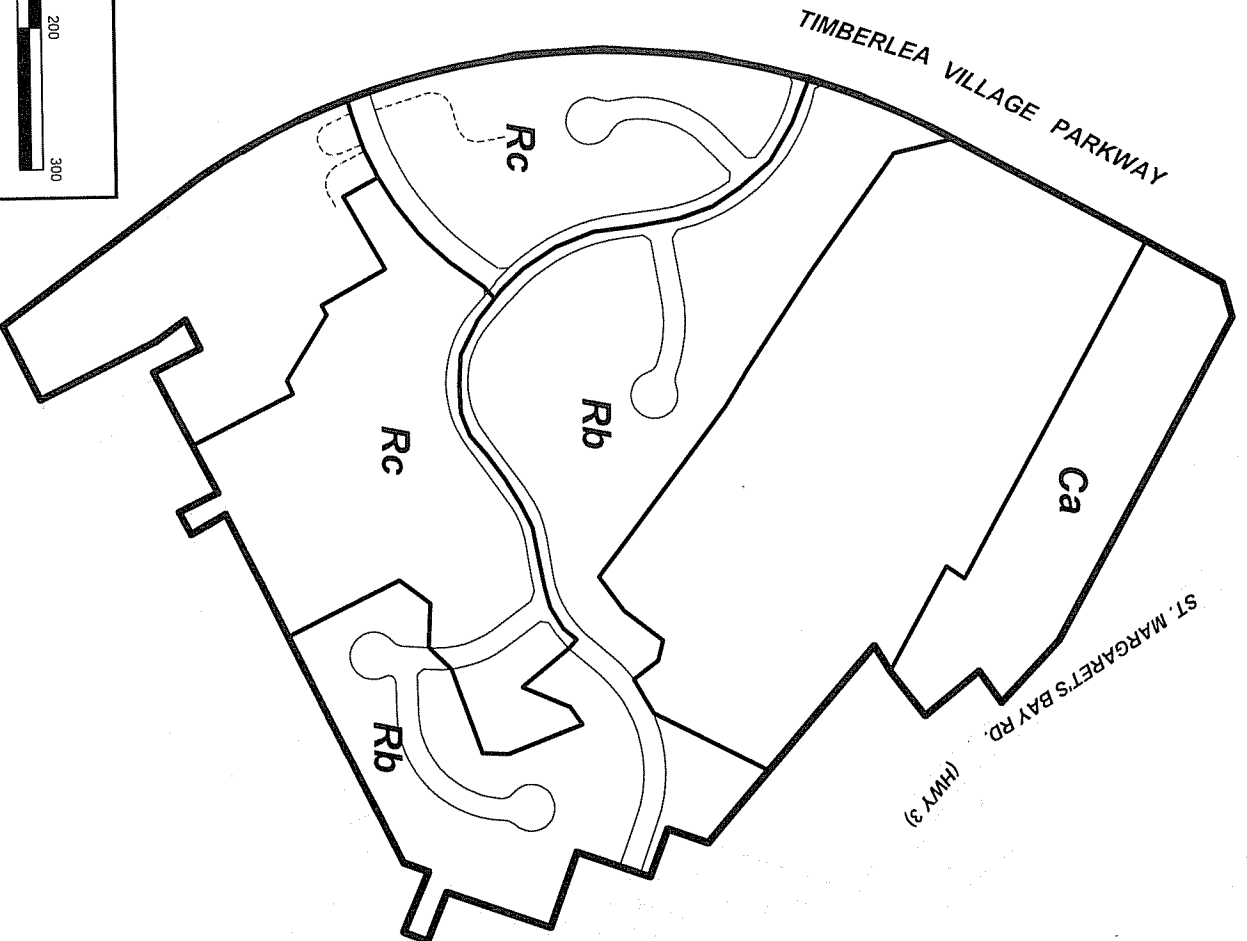
Community Concept Plan

RESIDENTIAL

- Rb** Single family homes with up to 60% townhomes and alternate housing types
- Rc** Mixed residential: townhomes, alternate housing types, multiple unit dwellings and single family homes

COMMERCIAL

- Ca** Commercial Use

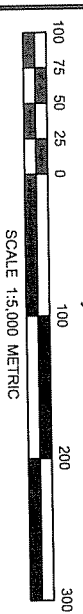
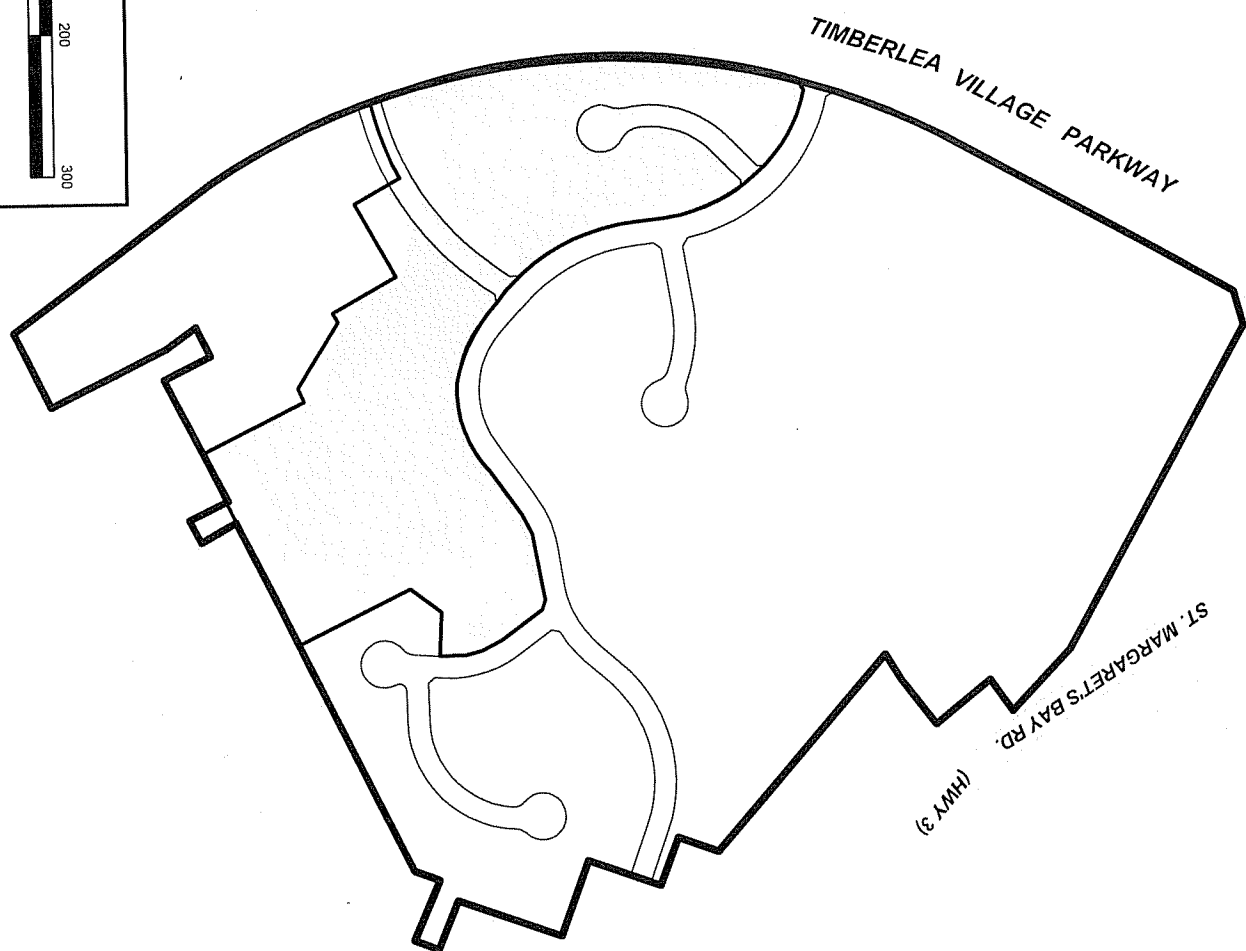


January 21, 2010



SCALE 1:5,000 METRIC

SOURCE BASE PLAN: EDM SCHEDULE B1, DATED MAY 29, 2003



January 21, 2010

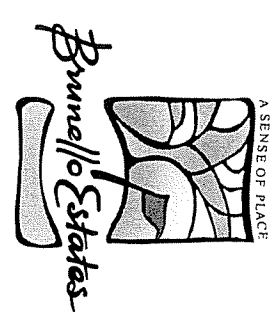
SCALE 1:5,000 METRIC

SOURCE BASE PLAN: EDM SCHEDULE B1, DATED MAY 29, 2003



Multi-Unit Buildings
Not to exceed 12 storeys





SCHEDULE L
Building Height Areas

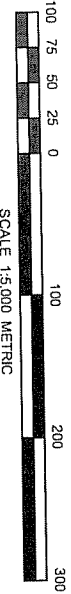




SCHEDULE M

Recreation Facilities

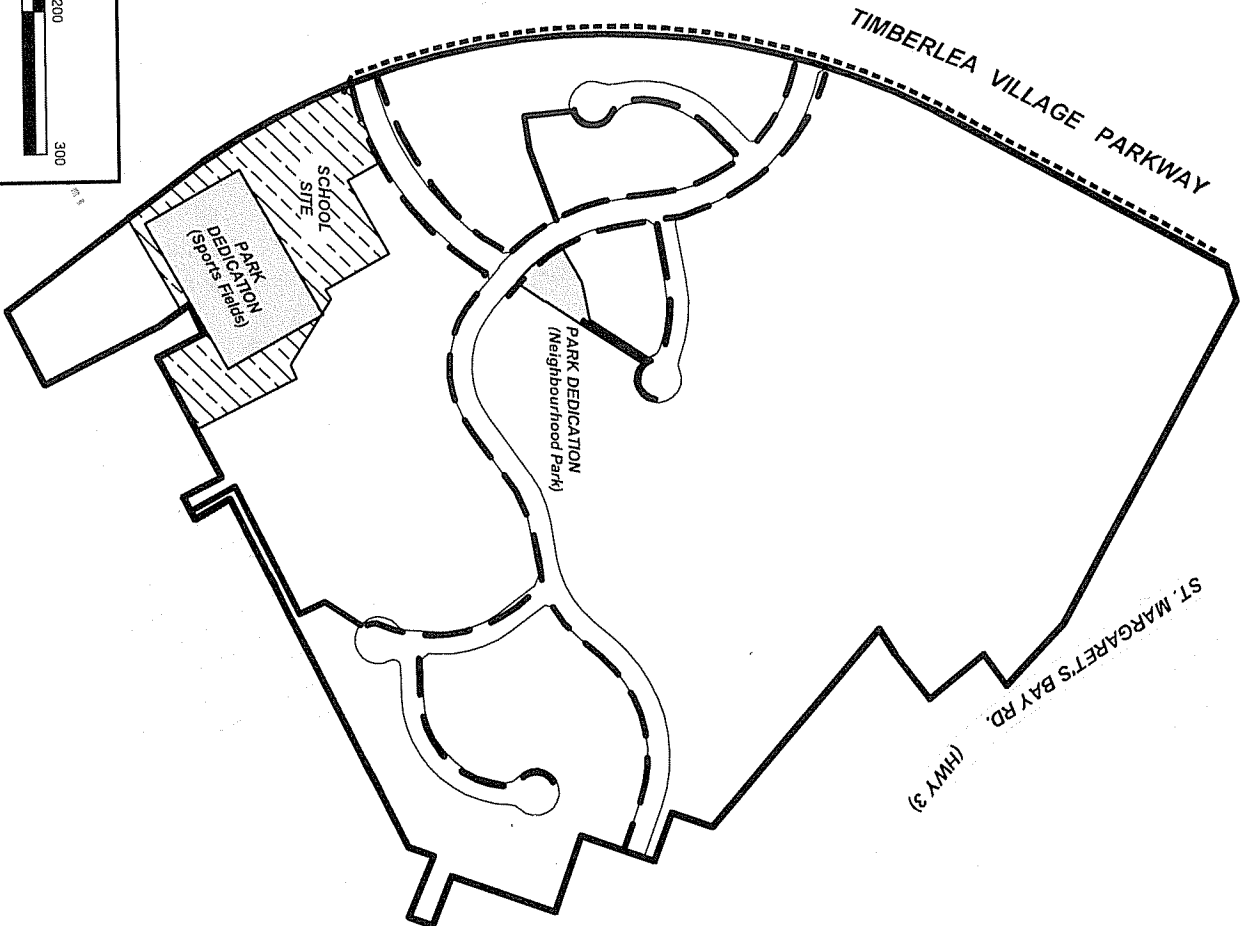
-  Public Walkways
(unless cul-de-sac is privately owned, then community association trails)
-  Sidewalk
-  Proposed HRM Multi-Use Trail
-  Park Dedication

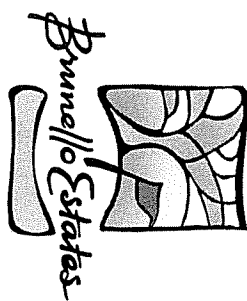


SCALE 1:5,000 METRIC

February 3, 2010

SOURCE BASE PLAN: EDM SCHEDULE B1, DATED MAY 29, 2003

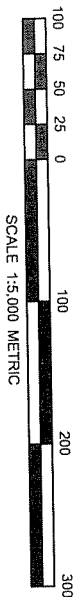




SCHEDULE N

Road Hierarchy

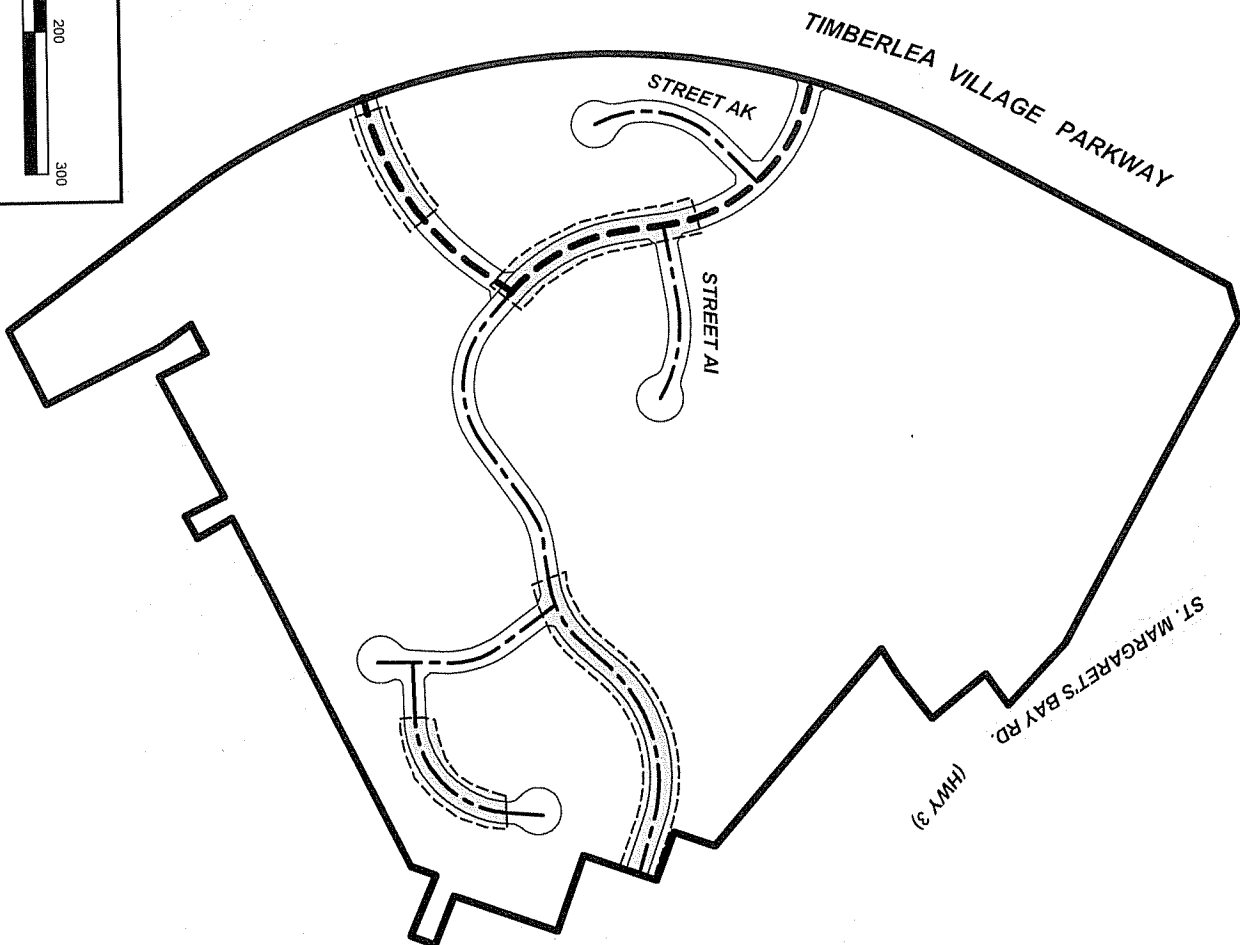
- Boulevard
- Commercial (Town Centre)
- Modified Urban Minor Collector
- Modified Urban Local
- Modified Rural Local or Private Road
- Shared Driveway
- Locations of Potentially Steep Grade ($\geq 10\%$)
- Subdivision Approval Limit (pending connection to Riverview Drive)

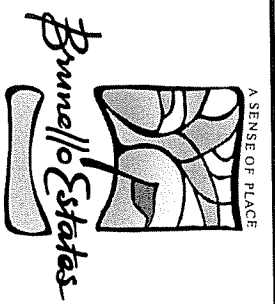


January 21, 2010

SCALE 1:5,000 METRIC

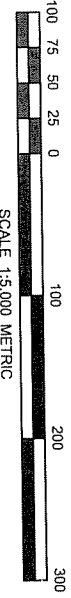
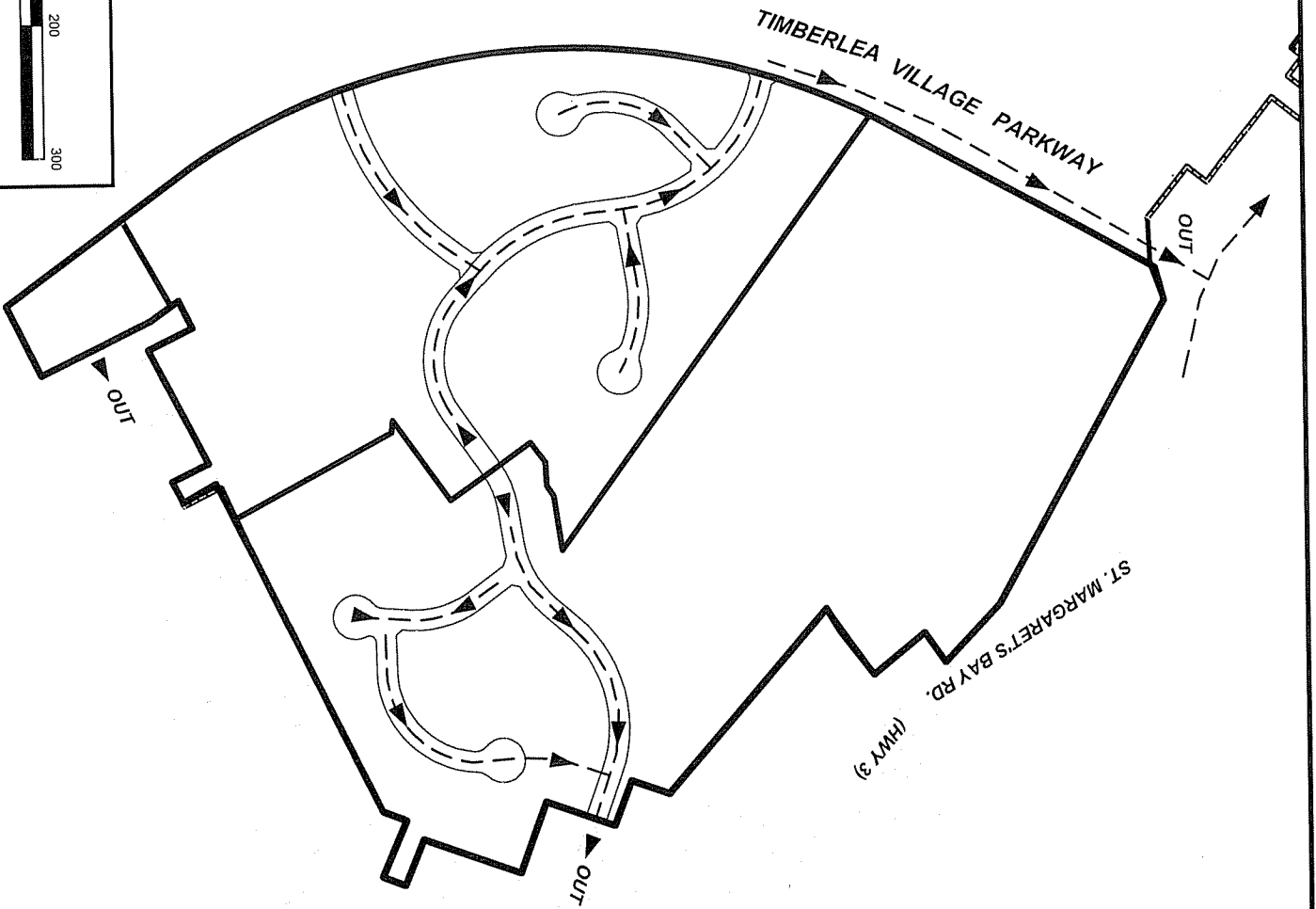
SOURCE BASE PLAN: EDM SCHEDULE B1, DATED MAY 29, 2003





SCHEDULE O Sanitary Sewer Servicing Schematic

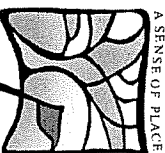
- Sewershed Boundary
- - - Sewer Service Line
- ▶ Sewer Direction



SCALE 1:5,000 METRIC

January 21, 2010

SOURCE BASE PLAN: EDM SCHEDULE B1, DATED MAY 29, 2003

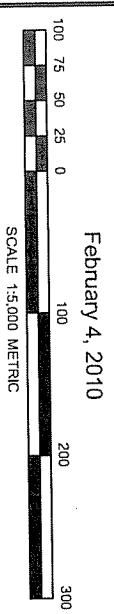


Brunello Estates

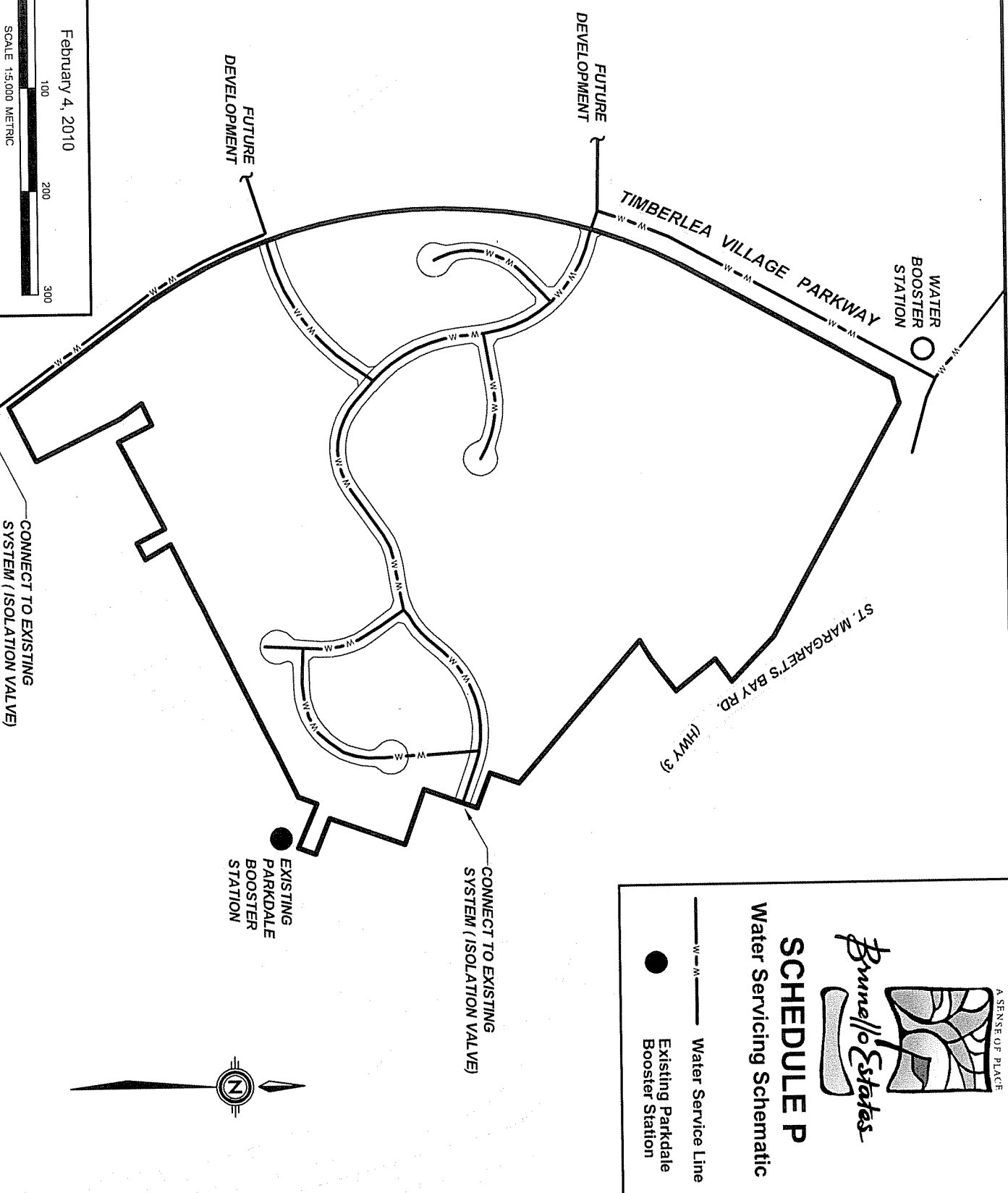
SCHEDULE P

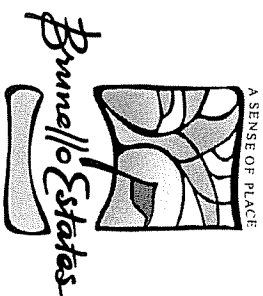
Water Servicing Schematic

- Water Service Line
- Existing Parkdale Booster Station



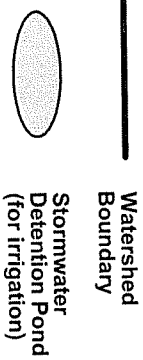
SOURCE BASE PLAN EDM SCHEDULE B1, DATED MAY 29, 2003





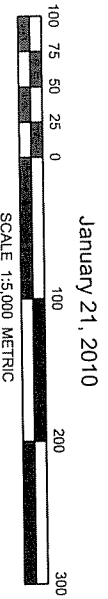
SCHEDULE Q

Conceptual Storm Water Management Plan

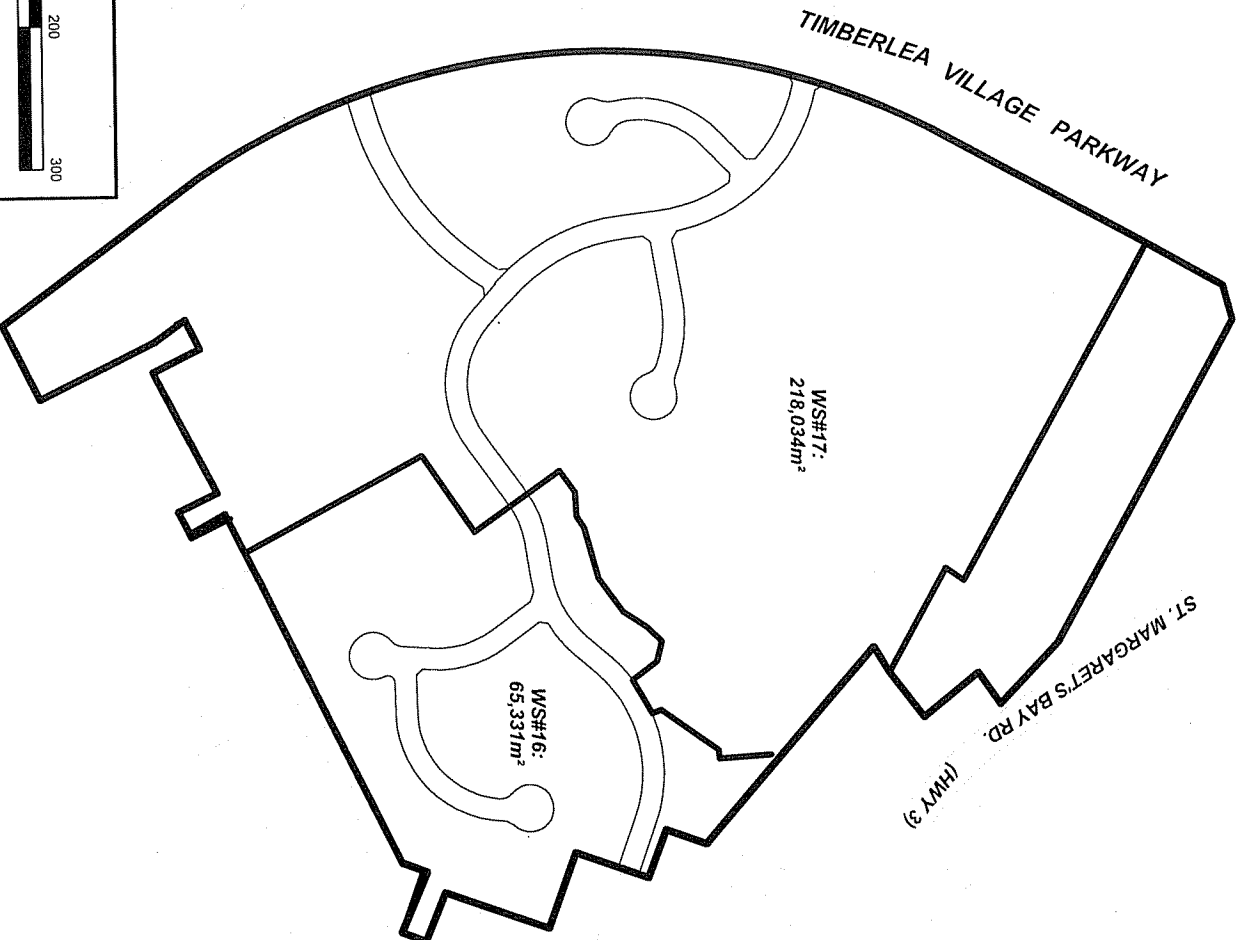


Notes:

1. Excavation and backfilling work to be done in accordance with "The Erosion and Sedimentation Control Handbook for Construction Sites" as prepared by NSE.
2. Disturbed areas to be limited to new construction area.
3. Where possible, stormwater flows to be directed to golf course ponds for detention, polishing and/or re-use.
4. Post construction peak flow rates for waters leaving the lands to be equal to pre-development peak flow rates.
5. Easements for stormwater detention ponds to be supplied as required by HRM.



SOURCE BASE PLAN: EDM SCHEDULE B1, DATED MAY 29, 2003

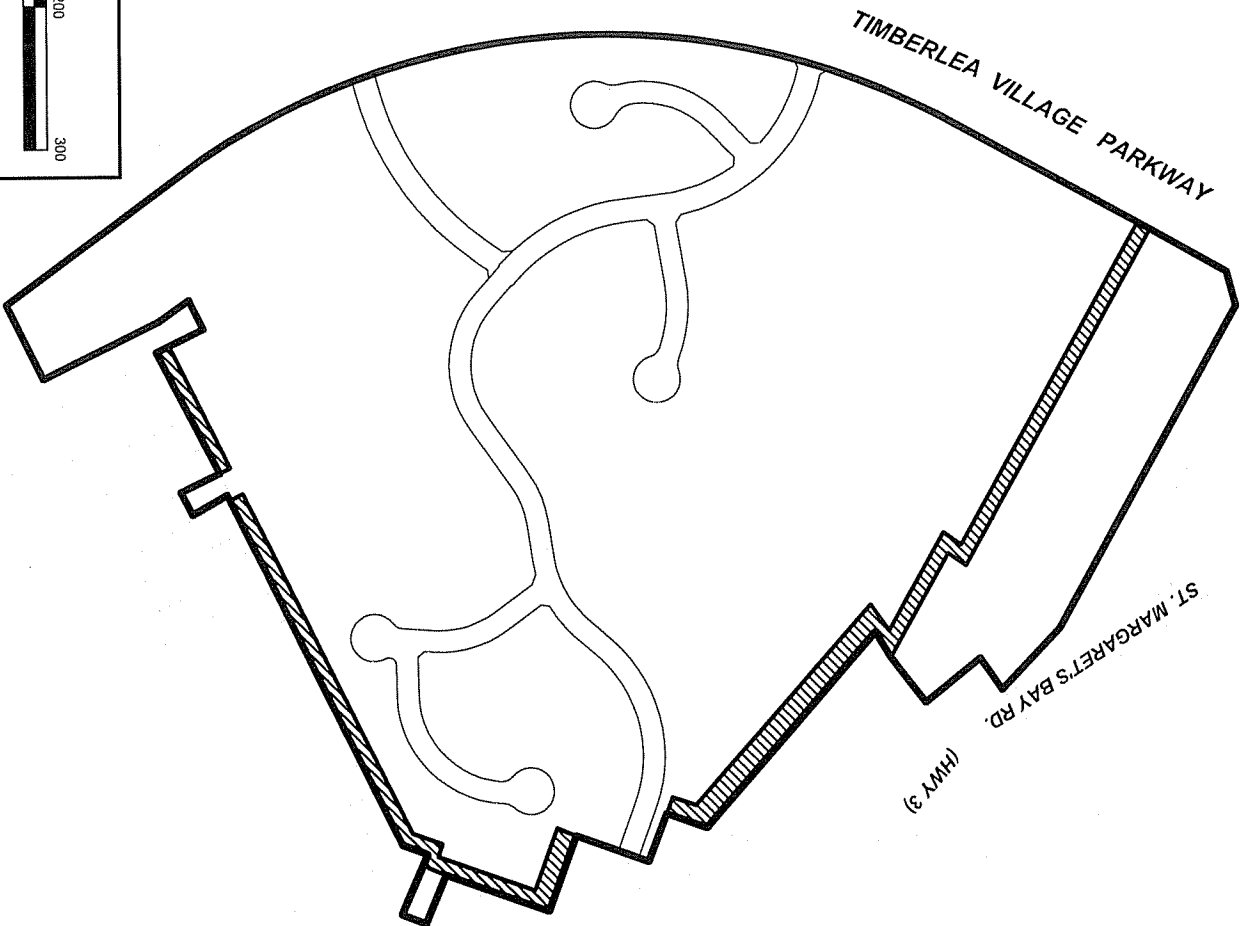




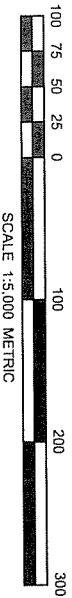
A SENSE OF PLACE

SCHEDULER

Non-Site Disturbance Areas

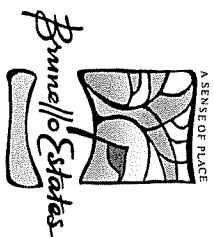


February 19, 2010



SCALE 1:5,000 METRIC

SOURCE BASE PLAN: EDM SCHEDULE B1, DATED MAY 29, 2003



www.brunelloestates.com
422-3500

MAPLE GROVE PHASE

July 5, 2010

	60' Single	9 units
	50' Single	65 units
	40' Single	25 units
	20' Townhouse	62 units
	30' Townhouse	19 units
	180' lots total	

SCHEDULE - 'S'

