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Halifax, Nova Scotia
B3J 3A5 Canada

Western Region Community Council
July 27, 2009

TO: Chair and Members of Western Region Community Council

SUBMITTED BY:

Paul Dunphy, Director of Community Development

DATE: July 7, 2009

SUBJECT: Case 01297: DA Time Extension - 7990 St. Margarets Bay Road,
Ingramport

ORIGIN

Application by Destiny Developments for a non-substantive amendment to the existing development agreement for 7990 St. Margarets Bay Road, Ingramport, in order to extend the date of commencement of construction.

RECOMMENDATION

It is recommended that Western Region Community Council:

1. Approve by resolution the non-substantive amendment to the existing development agreement for 7990, St. Margarets Bay Road, Ingramport, as detailed in the amending development agreement appended as Attachment A of this report.
2. Require that the amending development agreement be signed within 120 days, or any extension thereof granted by Community Council on request of the Applicant, from the date of final approval by Community Council or any other bodies as necessary, whichever is later; otherwise this approval will be void and obligations arising hereunder shall be at an end.

BACKGROUND

The property located at 7990 St. Margarets Bay Road, Ingramport, is the subject of a development agreement approved by Western Region Community Council on January 16, 2006, for a residential development with private amenity and recreation space. The existing development agreement allows the following:

- 12 townhouse style dwelling units;
- an accessory building;
- private amenity space (common building, swimming pool, pool hut, and 2 gazebos); and,
- a private wharf for use by the residents of the Condominium Corporation.

The existing development agreement requires the developer to commence development within two years from the date of registration of the agreement at the Land Registration Office, which occurred on November 13, 2007.¹ However, construction on the project has not yet commenced due to a downturn in the housing market. Destiny Developments, the developer, is now requesting Council to amend the existing development agreement to extend the date of commencement of construction by two years. The application does not include any other change to the approved development agreement.

Both staff and the applicant would also like to take the opportunity, which is presented through this non-substantive amendment request, to correct an error that occurred during the execution and registry of the existing development agreement. At that time, the wrong version of the site plan was attached. Instead of a site plan showing 12 townhouse units and a private wharf, one that showed 17 townhouses and a commercial marina was attached.

DISCUSSION

Clause 5.3 of the existing development agreement allows Council to grant an extension to the date of commencement of construction by resolution; a process that does not involve a public hearing. In considering amendments to existing development agreements, Council must first determine if they are consistent with current plan policies.

Staff has determined that the enabling policies contained in the Planning Districts 1 & 3 Municipal Planning Strategy (MPS) have remained unchanged since the project was approved by

¹ "Commencement of development" is defined under the agreement as the completion of the footings for the first residential building.

Council. Therefore, the proposed amendment is consistent with the Community MPS.

The Regional Municipal Planning Strategy (RMPS) was approved subsequent to Council's approval of the existing development agreement. The RMPS contains requirements for watercourse buffers that cannot be met by the current proposal (see Attachment B). However, the RMPS contains the following policy to help guide Council in its decisions on matters involving non-substantive amendments to development agreements that conflict with the RMPS:

"When evaluating a proposal for a development agreement or rezoning under this Plan or a Secondary Planning Strategy, all applicable policies under this Plan shall be considered, with the exception of non-substantive amendments to existing development agreements entered into prior to the effective date of this Plan and any agreement pursuant to policy IM-21." (Emphasis added)

Accordingly, since non-substantive amendments are not subject to the provisions of the RMPS, the proposed amendment is in keeping with the RMPS.

Conclusion

The proposal satisfies the applicable non-substantive provisions of the existing development agreement, as well as the policies of the Planning Districts 1 & 3 MPS and the RMPS, and as such, it is recommended that Western Region Community Council approve by resolution the attached amending development agreement.

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 approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

1. Western Region Community Council may choose to approve the amending development agreement, as contained in Attachment A. This is the recommended course of action.

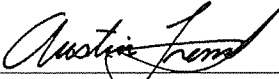
2. Western Region Community Council may choose to approve the terms of the amending development agreement with modifications or conditions. Some modifications or conditions may be outside the scope of a non-substantive amendment and may require a substantive amendment to the existing development agreement.
3. Western Region Community Council may choose to refuse to amend the existing development agreement. Pursuant to Section 245(6) of the *Halifax Regional Municipality Charter*, Council must provide reasons to the applicant justifying this refusal, based on the policies of the MPS and the non-substantive provisions of the existing development agreement.

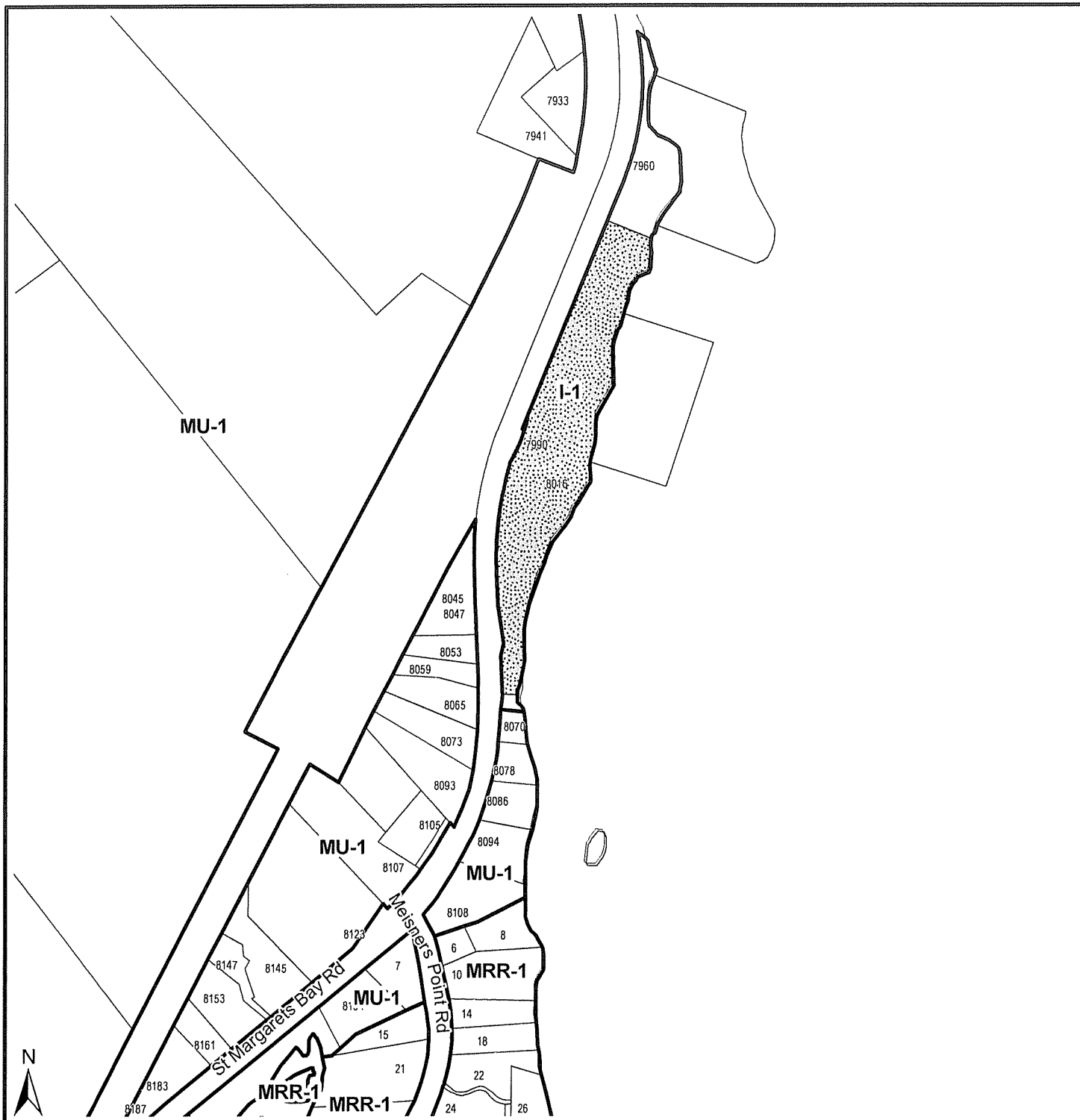
ATTACHMENTS

Map 1	Zoning and Location
Map 2	Generalized Future Land Use
Attachment A	Draft Amending Development Agreement
Attachment B	Relevant Regional Municipal Planning Strategy Policies

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 : Luc Ouellet, Planner I, 490-3689

Report Approved by: 
Austin French, Manager of Planning Services, 490-6717



Map 1 - Location and Zoning

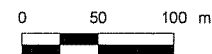
7990 St Margarets Bay Road (Hwy. 3)
Ingramport

 Area of development agreement
proposed to be discharged

Planning District 1 & 3
(St Margarets Bay) Plan Area

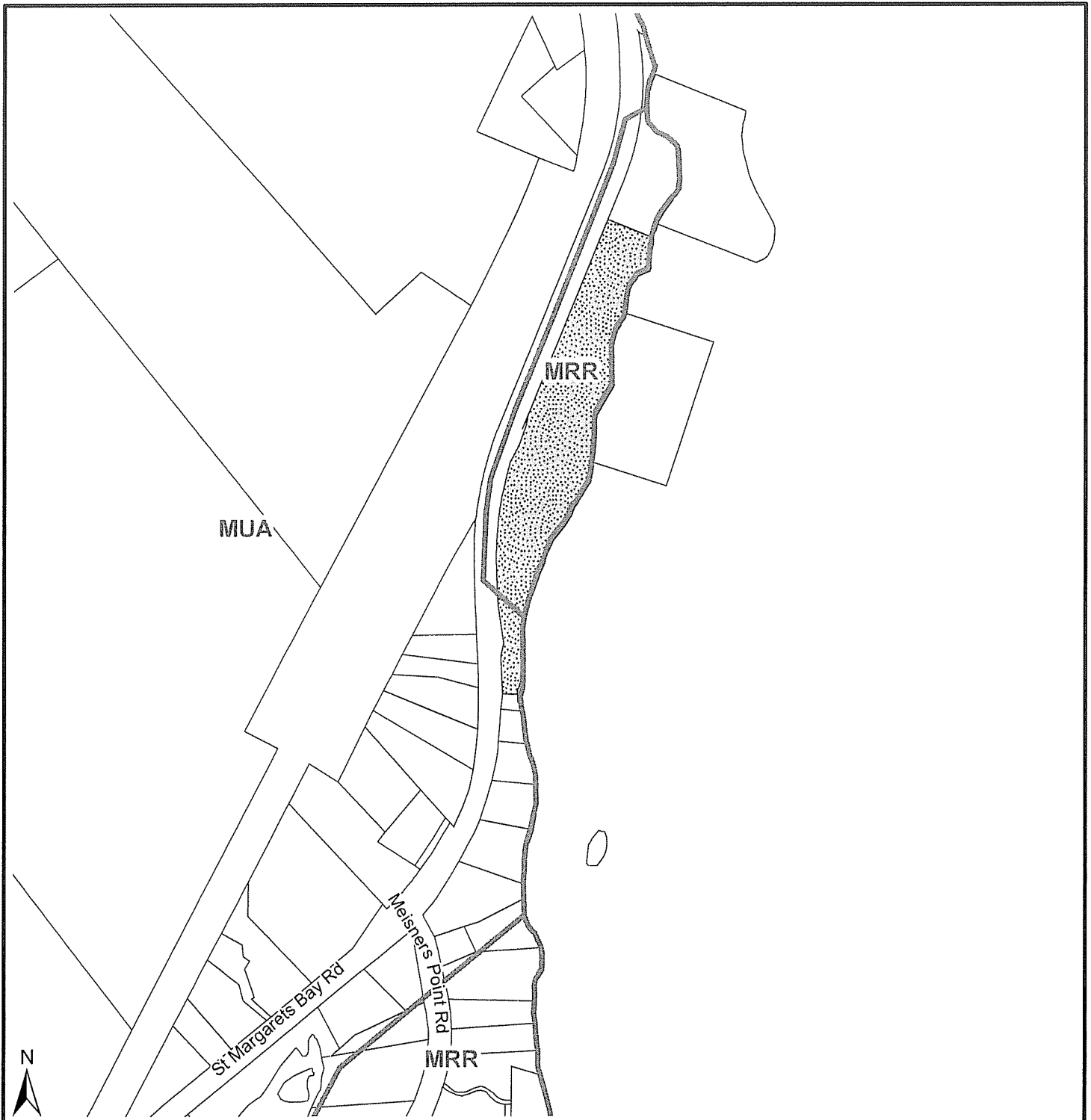
Zone

- MRR-1 Mixed Rural Residential
- MU-1 Mixed Use 1
- I-1 General Industrial




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

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



Map 2 - Generalized Future Land Use

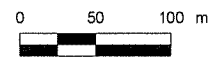
7990 St Margarets Bay Road (Hwy. 3)
Ingramport

 Area of development agreement
proposed to be discharged

Designation

Planning District 1 & 3
(St Margarets Bay) Plan Area

MRR Mixed Rural Residential
MUA Mixed Use A



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

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

whereupon this Agreement shall have no further force or effect, or upon the written request of the Developer, grant an extension to the date of commencement of development. For the purposes of this section, "commencement of development" shall mean completion of the footings for the first residential building.

- 2. Section 2.1.2 of the he Existing Agreement is amended by replacing the wording "Schedule 'B' Site Plan (0064000018)", with the following:

Schedule 'B' Site Plan

- 3. The Existing Agreement is amended by replacing Schedule 'B' with the one attached to this First Amending Agreement.
- 4. All other terms and conditions of the Existing Agreement shall remain in full force and effect.
- 5. This First Amending Agreement shall be binding upon the parties thereto, their heirs, successors, assigns, mortgagees, lessees and all subsequent owners, and shall run with the land which is the subject of this amending agreement until it is discharged by the Council.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this _____ day of _____, A.D., 2009.

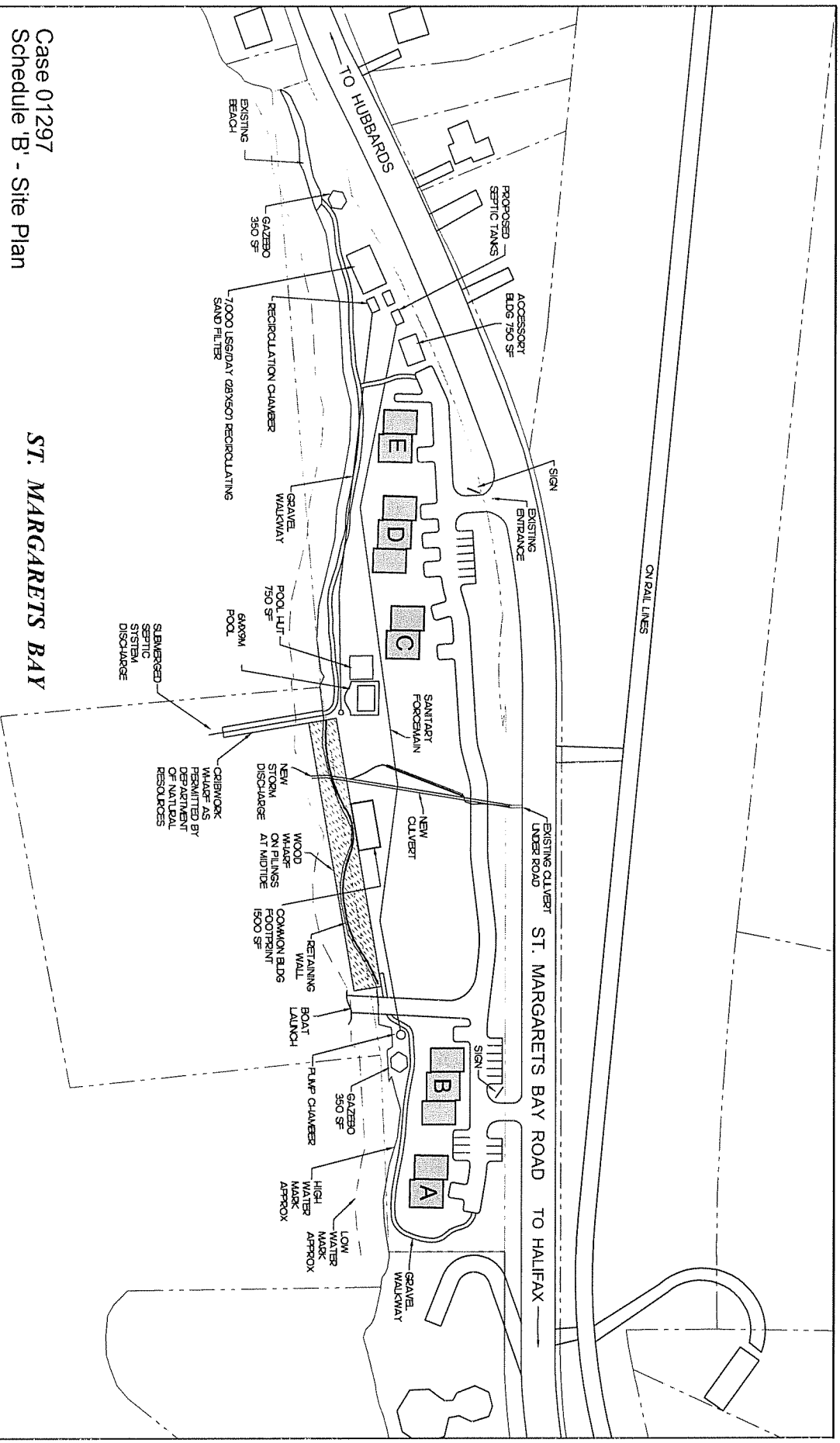
SIGNED, SEALED AND DELIVERED) **DESTINY DEVELOPMENTS**
) **INCORPORATED**
)
)
)
in the presence of)
)
)
per _____) per: _____
)
)

per _____) per: _____
)
)

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

per _____) per: _____
) **MAYOR**
)

per _____) per: _____
) **MUNICIPAL CLERK**



Case 01297
Schedule 'B' - Site Plan

ST. MARGARET'S BAY

SITE ANALYSIS

- LAND AND SEAWALL AREA: 4.71 ACRES
 - 3 BUILDINGS WITH 2 UNITS EACH
 - 2 BUILDINGS WITH 3 UNITS EACH
- BUILDING LEGEND
- A WINDSOR HAVEN
 - B CHESTER HAVEN
 - C MAHONE BAY HAVEN
 - D LINGENBURG HAVEN
 - E LIVERPOOL HAVEN

NOTES:

- 12 UNITS SHOWN
- PROPOSED CRIBWORK WALLS SHOWN
- GRAVEL PATH EXTENDED
- DRAWING IS APPROXIMATE AND SUBJECT TO SURVEY



INGRAMPORT, NOVA SCOTIA

MILLER'S LANDING
CONCEPTUAL SITE PLAN

7990 ST. MARGARET'S BAY ROAD

DATE:
JANUARY 6, 2006

DRAWING NO:
W03280210_V32



VERSION
3.2

DESTINY DEVELOPMENT INC
CHELATO PLACE
7105 CHELATO ROAD
HALIFAX, NS
B3L 4N8



Attachment B Relevant Regional Municipal Planning Strategy Policies

- E-10 HRM shall, through the applicable land use by-law, require the retention of a minimum 20 metre wide riparian buffer along all watercourses throughout HRM to protect the chemical, physical and biological functions of marine and freshwater resources. The by-law shall generally prohibit all development within the riparian buffer but provisions shall be made to permit board walks, walkways and trails of limited width, fences, public road crossings, driveway crossings, wastewater, storm and water infrastructure, marine dependent uses, fisheries uses, boat ramps, wharfs, small-scale accessory buildings or structures and attached decks, conservation uses, parks on public lands and historical sites and monuments within the buffer. In addition, no alteration of land levels or the removal of vegetation in relation to development will be permitted.
- E-16 HRM shall, through the applicable land use by-law, prohibit all residential development on the coast within a 2.5 metre elevation above the ordinary high water mark, except for lands designated Halifax Harbour on the Generalized Future Land Use Map (Map 2) and industrial lands within the port of Sheet Harbour. Provisions shall be made within the by-law to permit residential accessory structures, marine dependant uses, open space uses, parking lots and temporary uses within the 2.5 metre elevation.
- IM-20 When evaluating a proposal for a development agreement or rezoning under this Plan or a Secondary Planning Strategy, all applicable policies under this Plan shall be considered, with the exception of non-substantive amendments to existing development agreements entered into prior to the effective date of this Plan and any agreement pursuant to Policy IM-21.