

To: **Antigonish County Council**

From: **Planning Staff (EDPC)**

Date: **March 11, 2025**

Reference: **Planning Advisory Committee Reference: File No. AT-DA2025-002;  
Emphasis on accessible and unobstructed sidewalks in the Development Agreement and the correct Site Plan in the Development Agreement**

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**Recommendation:**

That the Municipality of Antigonish County Council **give Second Reading and approve** entering into the Development Agreement **as revised** and attached in this Memo.

**Background**

Staff received an application from Island Construction and Environmental Limited on January 01, 2025, seeking to enter into a Development Agreement for the above referenced development.

The File was presented to Planning Advisory Committee on Monday, March 03, 2025. During the PAC Meeting two concerns were raised:

1. Planning Advisory Committee noticed the old/original proposed Site Plan was attached to the Staff Report and attached Development Agreement.
  - This was an error on the Part of Planning Staff. The correct Site Plan has been attached in the Development Agreement found in Appendix A of this Memo.
2. Planning Advisory Committee had concerns regarding the accessibility of the public entrances of the building as part of continued maintenance. Concerns were specifically about outdoor storage and signage impeding the accessibility of public entrances by those in wheelchairs.
  - To address these concerns, Subsection 3.6.2 was added to ensure the accessibility of the sidewalks abutting the building.

The Development Agreement attached in Appendix A contains the revisions required and requested to address the concerns that arose at the Planning Advisory Committee Meeting

**Conclusion**

Planning Advisory Committee therefore is recommending the Municipality of Antigonish County Council **give Second Reading and approve** entering into the Development Agreement **as revised** and attached in this Memo.

**Appendix A: Development Agreement**

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This is to certify that the resolution to adopt this development agreement, of which this is a true copy, was passed at a duly called meeting of the Municipal Council of the Municipality of the County of Antigonish:

\_\_\_\_\_ day of \_\_\_\_\_ 2025.

Given under the hand of the Chief Administrative Officer and under the corporate seal of the Municipality this:

\_\_\_\_\_ day of \_\_\_\_\_ 2025.

\_\_\_\_\_  
Mrs. Shirlyn Donovan,  
Chief Administrative Officer

THIS DEVELOPMENT AGREEMENT made this \_\_\_\_\_ day  
of \_\_\_\_\_ AD 2025, BETWEEN:

**Island Construction & Environmental Ltd.**, a body corporate, with registered offices in Halifax, the City of Halifax, Province of Nova Scotia (hereinafter called the “Developer”).

OF THE FIRST PART

-and-

**MUNICIPALITY OF THE COUNTY OF ANTIGONISH**, a body corporate, in the County of Antigonish, Province of Nova Scotia (hereinafter call the “Municipality”).

OF THE SECOND PART

WHEREAS the Developer has good title to lands known as 10140010 located on Catherine Drive, Beech Hill in the Municipality of the County of Antigonish, Nova Scotia, and which said lands (hereinafter called the “Property”) are more particularly described in Schedule “A” of this Agreement; and

WHEREAS the Developer has requested permission to develop a gas station with a convenience store and restaurant by Development Agreement on the Property;

WHEREAS the Property is situated within an area designated Commercial on the Generalized Future Land Use Map of the West River Antigonish Harbour Plan Area, and General Commercial (C-2) Zone on the West River Antigonish Harbour Land Use By-law Zoning Map; and

WHEREAS Policy L-2.12 and I-1.11 (c) of the West River Antigonish Harbour Municipal Planning Strategy and Part 5.2.d. of the West River Antigonish Harbour Land Use By-law provide that the proposed use may be developed only if authorized by development agreement; and

WHEREAS the Developer has requested that the Municipality of the County of Antigonish enter into this development agreement pursuant to Section 255 of the *Municipal Government Act* so that the Developer may develop and use the Property in the manner specified;

WITNESS that in consideration of the sum of One Dollar (\$1.00) now paid by the Developer to the Municipality (the receipt of which is hereby acknowledged) the request to change the use of the Property is agreed upon by the Developer and the Municipality subject to the following:

## **PART 1: DEFINITIONS**

### **1.1 Words Not Defined under this Agreement**

All words unless otherwise specifically defined herein shall be as defined in the *West River Antigonish Harbour Land Use By-law of the Municipality of the County of Antigonish*, as amended from time to time. If a term is not defined in this document, its customary meaning shall apply.

## **PART 2: GENERAL REQUIREMENTS**

### **2.1 Applicability of Agreement**

2.2.1 The Developer agrees that the area of the Property shown on Schedule B shall be developed and used only in accordance with and subject to the terms and conditions of this Agreement.

## **2.2 Applicability of the Land Use By-law**

Except as otherwise stipulated by this Agreement, the development of the Property shall comply with the West River Antigonish Harbour Land Use By-law of the Municipality of the County of Antigonish and the Land Use By-law for the Municipality of the County of Antigonish (Concerning the Regulation of Wind Turbine Development).

## **2.3 Applicability of Other By-laws, Statutes, and Regulations**

2.3.1 Subject to the provisions of this Agreement, the Developer shall be bound by all By-laws and regulations of the Municipality as well as by any applicable statutes and regulations of the Province of Nova Scotia and the Government of Canada;

2.3.2 Further to Subsection 2.3.1, the Developer shall receive any necessary approvals from the Municipal Department of Public Works with respect to access to the site prior to any development or building permits being issued;

## **2.4 Conflict**

2.4.1 Where the provisions of this Agreement conflict with those of any other applicable Municipal by-law (other than the *Subdivision or Land Use By-law* to the extent varied by this Agreement), or any provincial or federal statute or regulation, the higher or more stringent requirements shall prevail.

2.4.2 Where the written text of this Agreement conflict with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.

## **2.5 Cost, Expenses, Liabilities, and Obligations**

2.5.1 The Developer shall be responsible for all cost, expenses, liabilities, and obligations imposed under or incurred in order to satisfy the terms of this Agreement and all Federal, Provincial, and Municipal laws, by-laws, regulations, and codes applicable to the Property.

2.5.2 The Developer shall be responsible for all cost, expenses, liabilities, and obligations necessary to meet the fire protection requirements of the National Building Code.

## **2.6 Provisions Severable**

The provisions of this Agreement are severable from one another and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.

## **PART 3: USE OF LANDS AND DEVELOPMENT PROVISIONS**

### **3.1 Schedules**

The Developer shall develop the Property in a manner, which, in the opinion of the Development Officer, conforms to this agreement and the following Schedules attached to this Agreement.

Schedule A Parcel Description

Schedule B Site Plan

Schedule C Building Elevations

### **3.2 Future Subdivision of Land**

No alterations to the Property are permitted without a substantive amendment to this Agreement except lands not occupied by uses enabled in this Agreement may be subdivided, subject to the requirements of

the Land Use By-law, the Subdivision By-law, and *Municipal Government Act* relating to the notice of intent to discharge the Agreement (for a portion of the lands).

### **3.3 Requirements Prior to Approval**

3.3.1 No development permit shall be granted for the development unless:

- a) The Developer has provided proof that all requirements of Schedule(s) B and C were complied with, except for modifications authorized in Subsections 3.4.6;
- b) Detailed signage and lighting plans as per Section 3.5 are submitted;
- c) Erosion and sedimentation control measures as per Section 4.2 were implemented; and
- d) A copy of the 'Storm Water Management Plan' prepared by a qualified professional as per Section 4.3.1 is submitted.

3.3.2 The Developer shall not occupy or use the Property for any of the uses permitted by this Agreement unless Building and Occupancy Permits have been issued by the Municipality. No Occupancy Permit shall be issued by the Municipality unless and until the Developer has complied with all applicable provisions of this Agreement and the Land Use By-law (except to the extent that the provisions of the Land Use By-law are varied by this Agreement) and with the terms and conditions of all permits, licenses, and approvals required to be obtained by the Developer pursuant to this Agreement.

### **3.4 General Description of Land Use**

3.4.1 The use of the Property permitted by this Agreement shall be a gas station with a convenience store and restaurant.

3.4.2 The front lot line shall be the property line with frontage on Catherine Drive.

3.4.3 No building shall exceed a maximum of 10.7 metres or 35 feet in height.

3.4.4 The minimum setbacks from the main building to the property lines are as follows:

Front Yard Setback	12.2 m (40 ft)
Side Yard Setback	6.1 m (20 ft)
Rear Yard Setback	12.2 m (40 ft)

3.4.5 Notwithstanding the *West River Antigonish Harbour Land Use By-law* off-street parking may be located between the front façade of a building and any street line.

3.4.6 The location of Building A and driveways shall be governed by Schedule B. Minor alterations to driveways that do not result in traffic circulation outside of the area subject to the development agreement shall be accepted by the Development Officer and do not require an amendment to this Agreement.

### **3.5 Commercial Site Lighting, Signage, Storage, Landscaping & Fencing**

3.5.1 Lighting, signage and storage shall adhere to the requirements of the *West River Antigonish Harbour Land Use By-law of the Municipality of the County of Antigonish*.

3.5.2 The type and location of all outdoor lighting shall be designed as full cut-off with no light directed at the night sky.

- 3.5.3 The Developer shall include lighting details on the detailed plans submitted for Development Permits when submitted to the Development Officer for review to determine compliance with this Agreement.
- 3.5.4 The Developer shall provide signage details on the detailed plans submitted for Development Permits when submitted to the Development Officer for review to determine compliance with this Agreement.
- 3.5.5 The Developer shall wholly screen any and all waste bins (including but not limited to garbage and recycling bins) that are stored outside with an opaque visual barrier.
- 3.5.6 The Developer shall wholly screen the outdoor storage of any and all equipment or material that is not for sale with an opaque visual barrier.
- 3.5.7 Loading spaces/facilities shall be located at the rear of the main structure and the location of a drive thru between the loading spaces/facilities and any roadway shall constitute adequate screening/buffering.

### **3.6 Maintenance**

- 3.6.1 The Developer shall maintain and keep in good repair all portions of the development on the Property, including but not limited to, the exterior of the building, fencing, walkways, recreational amenities, parking areas and driveways, and the maintenance of all landscaping including the replacement of damaged or dead plant stock, trimming and litter control, garbage removal, snow and ice control, and the salting of walkways and driveways.
- 3.6.2 Further to Subsection 3.6.1, the Developer shall ensure the sidewalks along the building remain unobstructed and accessible in accordance with the *Nova Scotia Accessibility Act*.

### **3.7 Hours of Operation**

Hours of operation shall be 24 hours a day, seven days a week.

## **PART 4: STREETS, MUNICIPAL SERVICES, AND ENVIRONMENTAL PROTECTION**

### **4.1 Off-Site Disturbance**

- 4.1.1 Any disturbance to existing off-site infrastructure resulting from the development, including but not limited to streets, sidewalks, curbs and gutters, street trees, landscaped areas, and utilities shall be the responsibility of the Developer, and shall be reinstated, removed, replaced, or relocated by the Developer as directed by the Development Officer, in consultation with the Municipal Engineer.

### **4.2 Erosion and Sedimentation Control**

- 4.2.1 An Erosion and Sedimentation Control plan designed for the development by a professional engineer must be prepared before and implemented during construction;
  - (a) exposed soils must be stabilized by such measures as covering soil stockpiles with hay/straw, and;
  - (b) any water pumped or drained from the excavation must have a Suspended Solid (SS) concentration below 25 mg/l (ppm) before it crosses a lot line.
- 4.2.2 During the commencement of on-site works, the Developer shall comply with the *Erosion and Sedimentation Control Handbook for Construction Sites* as prepared and revised from time to time

by Nova Scotia Environment.

#### **4.3 Storm Water Management**

- 4.3.1 The Developer shall prepare a 'Storm and Surface Water Management Plan' that is prepared by an adequately qualified professional.
- 4.3.2 All private storm water facilities shall be maintained in good order to maintain full storage capacity by the owner of the lot on which they are situated.
- 4.3.3 Where private storm systems cross multiple properties, the Developer shall provide easements in favour of the affected properties to permit the flow of storm water.

### **PART 5: AMENDMENTS**

#### **5.1 Non-Substantive Amendments**

- 5.1.1 The following item is considered by both parties to be non-substantive and may be amended by resolution of Council:
  - a) The granting of an extension to the date of commencement or completion of construction as identified in Section 6.3 of this Agreement;
  - b) A change of use within the main building to a use permitted in the zone provided that no additions are made to the main building.

#### **5.2 Substantive Amendments**

Amendments to any matters not identified under Section 5.1 shall be deemed substantive and may only be amended in accordance with the approval requirements of the *Municipal Government Act*.

#### **5.3 Discharge**

Notwithstanding the foregoing, discharge of this Agreement is not a substantive matter and this Agreement may be discharged by Council without a public hearing.

### **PART 6: REGISTRATION, EFFECT OF CONVEYANCES, AND DISCHARGE**

#### **6.1 Registration**

A copy of this Agreement and every amendment or discharge of this Agreement shall be recorded at the Registry of Deeds or Land Registry Office.

#### **6.2 Subsequent Owners**

- 6.2.1 This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, mortgagees, lessees, and all subsequent owners, and shall run with the Property that is the subject of this Agreement until this Agreement is discharged by Council.
- 6.2.2 Upon the transfer of title to any lot(s), the subsequent owner(s) thereof shall observe and perform the terms and conditions of this Agreement to the extent applicable to the lot(s).

#### **6.3 Commencement of Development**

- 6.3.1 This agreement or portions of it may be discharged at the discretion of the Municipality with or without the concurrence of the property owner if construction has not commenced within two (2)

years and/or construction has not been completed within five (5) years of the registration of the agreement.

- 6.3.2 For the purpose of this section, Council may consider granting an extension of the commencement or completion of development time period through a resolution under Section 5.1, if the Municipality receives a written request from the Developer at least sixty (60) calendar days prior to the expiry of the commencement of development time period.

#### **6.4 Completion of Development**

This agreement may be discharged at the discretion of the Municipality upon the completion of the project and the satisfactory fulfillment of the terms of the Agreement.

### **PART 7: COMPLIANCE AND RIGHTS AND REMEDIES ON DEFAULT**

#### **7.1 Enforcement**

The Developer agrees that any officer appointed by the Municipality to enforce this Agreement shall be granted access onto the Property during all reasonable hours without obtaining consent of the Developer.

#### **7.2 Failure to Comply**

If the Developer fails to observe or perform any condition of this Agreement after the Municipality has given the Developer thirty (30) days written notice of the failure or default, then in each such case:

- a) The Municipality shall be entitled to apply to any court of competent jurisdiction for injunction relief including an order prohibiting the Developer from continuing such default and the Developer hereby submits to the jurisdiction of such Court and waives any defense based upon the allegation that damages would be an adequate remedy;
- b) The Municipality may enter onto the Property and perform any of the covenants contained in this Agreement or take such remedial action as is considered necessary to correct a break of the Agreement, whereupon all reasonable expenses, whether arising out of the entry onto the Property or from the performance of the covenants or remedial action, shall be a first lien on the Property and be shown on any tax certificate issued under the Assessment Act; or,
- c) The Municipality may, by resolution, discharge this Agreement whereupon this Agreement shall have no further force or effect and henceforth the development of the Property shall conform with the provisions of the Land Use By-law.

#### **7.3 Municipal Responsibility**

The Municipality does not make any representation to the Developer about the suitability of the Property for the development proposed by this Agreement. The Developer assumes all risks and must ensure that any proposed development complies with this Agreement and all other laws pertaining to the development.

#### **7.4 Warranties by the Developer**

The Developer warrants as follows:

- a) The Developer has good title in fee simple to the Property or good beneficial title subject to normal financing encumbrance or is the sole holder of a Registered Interest in the Property. No other entity has an interest in the Property which would require their signature on this Agreement to validly bind the Property or Developer has obtained the approval of every other entity which has an interest in the Property whose authorization is required for the

Developers to sign the Agreement to validly bind the Property.

- b) The Developer has taken all steps necessary to, and it has full authority to, enter the Agreement.

#### **7.5 Onus for Compliance on Developer**

Any failure of the Municipality to insist upon a strict performance of any requirements or conditions contained in the Agreement shall not be deemed a waiver of any subsequent breach or default in the conditions or requirement contained in this Agreement.

#### **7.6 Costs**

The Developer is responsible for all costs associated with recording this Agreement in the Registry of Deeds or Land Registration Office, as applicable, and all costs of advertising for and recording any amendments.

#### **7.7 Full Agreement**

The Agreement constitutes the entire agreement and contract entered into by the Municipality and the Developer. No other agreement or representation, oral or written, shall be binding.

#### **7.8 Interpretation**

- 7.8.1 Where context requires, the singular shall include the plural, and the use of words in one gender shall include the masculine, feminine, and neutral genders as circumstances warrant;
- 7.8.2 Where the written text of this Agreement conflicts with information provided in the Schedules attached to this Agreement, the written text of this Agreement shall prevail.
- 7.8.3 References to particular sections of statutes and by-laws shall be deemed to the references to any successor legislation and by-laws even if the content has been amended, unless the context otherwise requires.



THIS AGREEMENT shall ensure to the benefit of and be binding upon the Parties hereto, their respective agents, successors, and assigns.

WITNESS that this Agreement, made in triplicate, was properly executed by the respective Parties on this \_\_\_\_ day of \_\_\_\_ 2024.

SIGNED, SEALED and DELIVERED  
in the presence of

MUNICIPALITY OF THE COUNTY OF ANTIGONISH  
per:

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)  
)  
)  
)  
)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
WARDEN

\_\_\_\_\_  
CHIEF ADMINISTRATIVE OFFICER

SIGNED, SEALED and DELIVERED  
in the presence of

DEVELOPER(S):

)  
)  
)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
C. JOHN NEWHOOK  
DIRECTOR, ISLAND CONSTRUCTION &  
ENVIRONMENTAL LTD

## **SCHEDULE "A"**

### **Parcel Description**

Registration County: ANTIGONISH COUNTY

Street/Place Name: CATHERINE DRIVE /BEECH HILL

Title of Plan: PLAN OF SUBDIVISION SHOWING LOT 9 BEING LANDS OF RON  
MACGILLIVRAY HOLDINGS LTD. AT CATHERINE DRIVE, BEECH HILL

Designation of Parcel on Plan: LOT 9

Registration Number of Plan: 124827024

Registration Date of Plan: 2024-10-08 11:47:59

\*\*\* Municipal Government Act, Part IX Compliance \*\*\*

Compliance:

The parcel is created by a subdivision (details below) that has been filed under the Registry Act or registered under the Land Registration Act

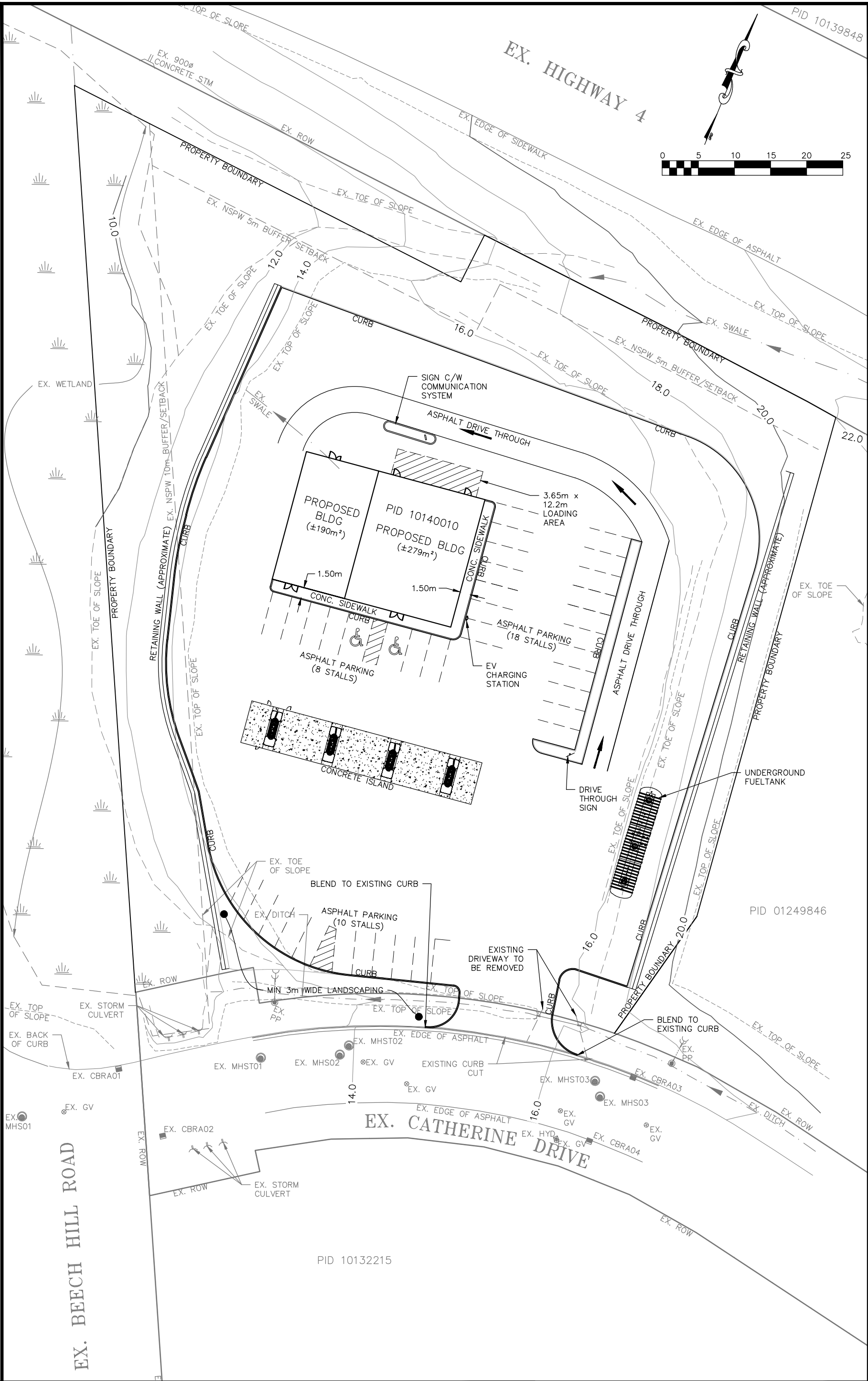
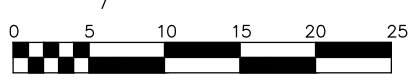
Registration District: ANTIGONISH COUNTY

Registration Year: 2024

Plan or Document Number: 124827024

PID 10139848

EX. HIGHWAY 4



LOT 9 - BEECH HILL, ANTIGONISH

PROPOSED SITE LAYOUT

Revision			
No.	Comments	Date	By
0.	XXXXXXXX	XXXXXXXX	XXXXXXXX

- NOTES:
1. Elevations are Geodetic NAD83 MTM Zone 4 NSCM @203047 Elev = 33.163.
  2. Contours are 2.0m intervals and represent existing ground.
  3. All dimensions are in meters unless noted otherwise.

Date: XXXXXXXX	Project No.: 24-10740
Scale: 1:500	Drawing No.: SK01

This drawing was created in Mi'kma'ki; the ancestral, cultural, and spiritual lands of the Mi'kmaq People.

**General Notes**  
 1. PRELIMINARY. NOT TO BE USED FOR CONSTRUCTION.

NO.	REVISION FOR REVIEW	DATE	BY

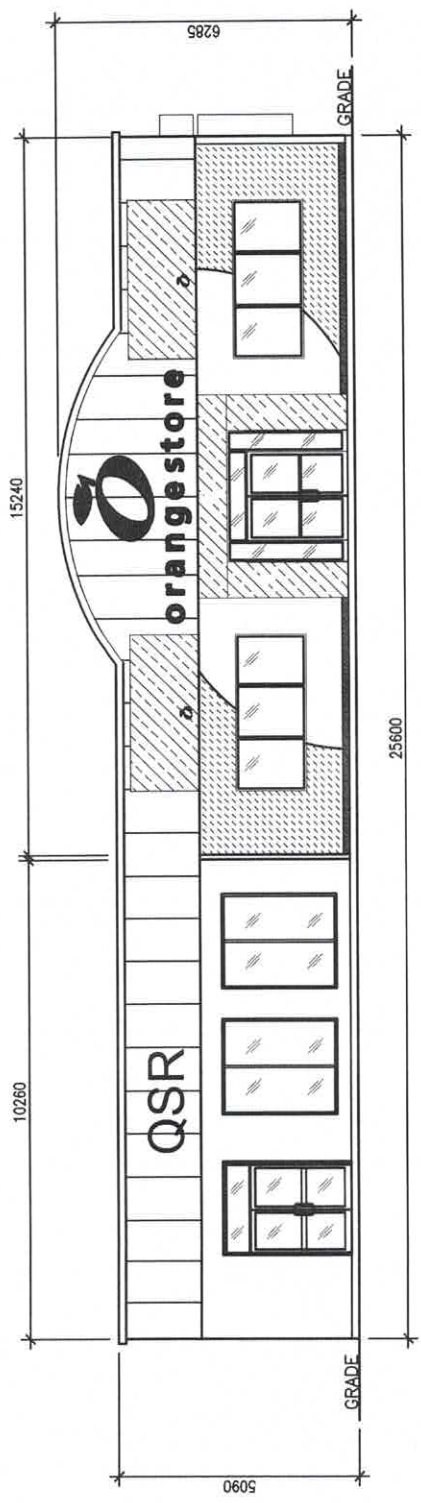
**GENERAL CONTRACTOR**  
**ICE ENVIRONMENTAL LTD.**  
 18 Dundas Avenue  
 West York, ON  
 TEL: (905) 707-3889  
 FAX: (905) 707-4278

**CLIENT**  
**Atlantic Planning & Management Ltd.**  
 St. Thomas Line  
 Paradise, Newfoundland  
 TEL: (709) 791-2222

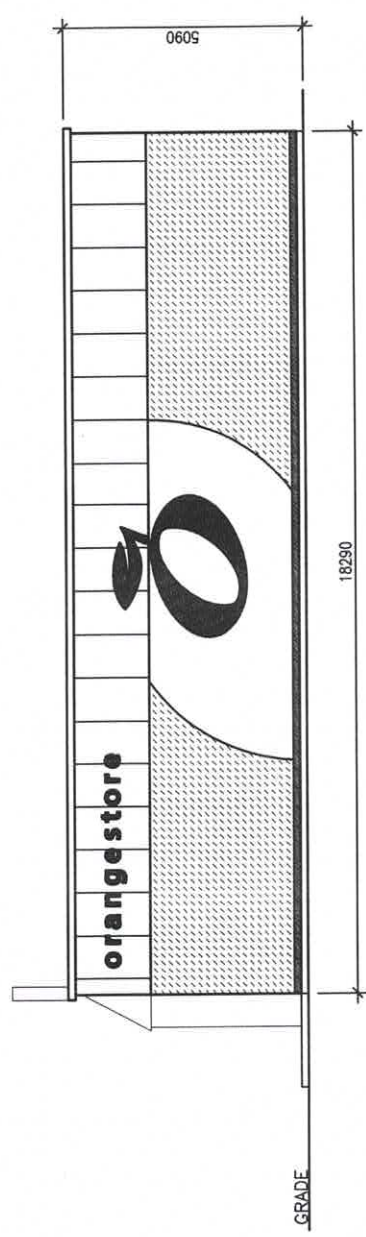
**DESIGNER**  
**ANTIGONISH PROPOSED EXTERIOR ELEVATIONS**

Drawn By:	JL
Designed By:	JN
Checked By:	JL
Approved By:	RS
Date:	2024-11-08
Scale:	1:100

Sheet: **S01**



1 FRONT ELEVATION  
 S01 1:100



2 RIGHT ELEVATION  
 S01 1:100

General Notes  
 1. PRELIMINARY NOT TO BE USED FOR CONSTRUCTION.

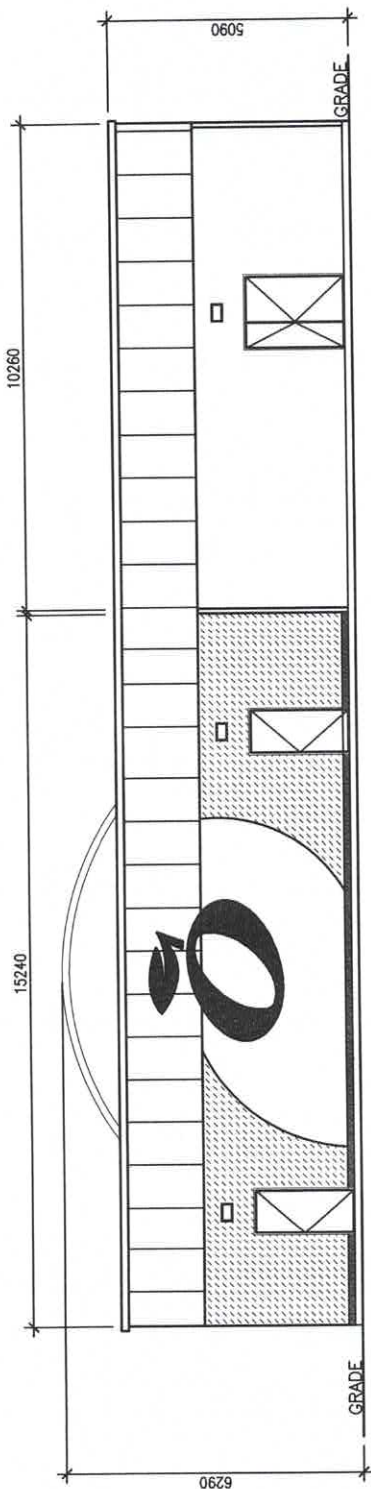
No.	Revisions/Comments	Date
0	ISSUED FOR PERMIT	2024-11-08

GENERAL CONTRACTOR  
**ACE**  
 18000 10th Street  
 St. Thomas, VI  
 TEL: (340) 342-2200  
 FAX: (340) 342-2019

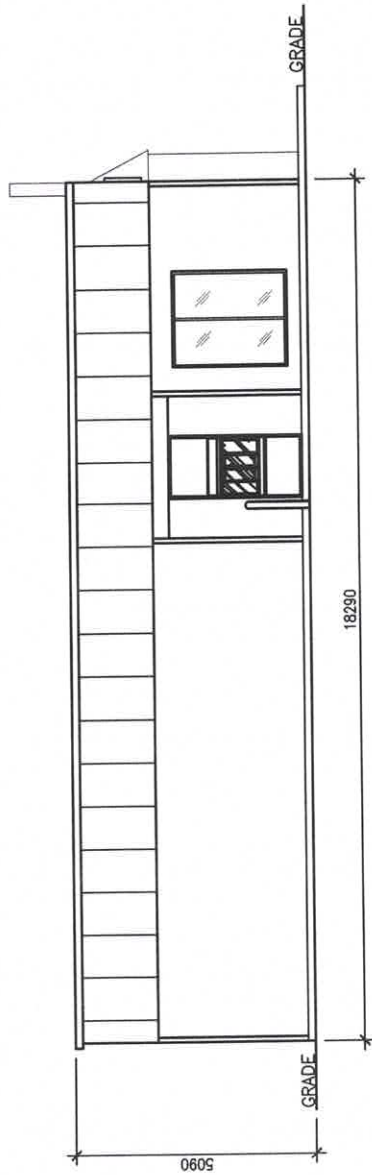
ARCHITECT  
**ACOR**  
 Atlantic Planning & Management Ltd.  
 St. Thomas Line  
 Paradise, Neeroundland  
 P.O. Box 301  
 TEL: (340) 341-2200

PLOT NAME AND ADDRESS  
**ANTIGONISH PROPOSED EXTERIOR ELEVATIONS**

Drawn By: JL	Sheet: S02
Designed By: JN	
Checked By: JL	
Approved By: RS	
Date: 2024-11-08	
Scale: 1:100	



1 REAR ELEVATION  
 S02 1:100



2 LEFT ELEVATION  
 S02 1:100