

# **Cape Breton Regional Municipality**

## **By-law C-300**

### **Commercial Development District Improvement By-law**

*Pursuant to Section 71C and Section 71D of Municipal Government Act, 1998, c. 18, s. 1.*

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WHEREAS Section 71C and 71D of *Municipal Government Act* enables the Cape Breton Regional Municipality, with the approval of the Minister of Municipal Affairs, to adopt this by-law;

WHEREAS it is desirable to permit the phasing-in, over a period of up to 10 years, of an increase to the taxable assessed value of certain commercial properties located in the Cape Breton Regional Municipality (CBRM) Commercial Development Districts and further to provide for the a partial rebate of taxes paid by the Owner during the phasing in period;

The Council of the Cape Breton Regional Municipality, under the authority of the *Municipal Government Act*, pursuant to Section 71C and subject to approval of the Minister in Section 71D, enacts the following By-law:

#### **SHORT TITLE**

- 1 This By-law shall be known as By-law No. C-300 and may be cited as the “Commercial Development District Improvement By-law” (also known as the ‘CDD By-Law’).

#### **APPLICATION**

- 2 This By-law shall apply to a property which meets the definition of an eligible property as defined in subsection 71C(1) of the *Municipal Government Act*, if that property is located within a Commercial Development District (CDD) as defined in the Cape Breton Regional Municipality’s Municipal Planning Strategy and as depicted in the attached Appendix "A".

#### **INTRODUCTION**

- 3 The Development Support Program is established to provide assistance to owners of eligible property by providing the possibility of an annual partial rebate on taxes levied by the owner if the owner has undertaken development of their eligible property within a Commercial Development District. The rebates are designed to stimulate building construction and the expansion of the economy of the CBRM. Rebates will be processed by December 31<sup>st</sup> of the calendar year.
- 4 The Development Support Program may provide a participating owner with a partial rebate on taxes levied on an eligible property in the CDD by utilizing all or a portion of the "Rebate Eligible Assessment".
- 5 Prior to receiving the Development Support, an owner of an eligible property must enter into Phased-In Assessment Agreement with the CBRM.

**DEVELOPMENT**

- 6 An eligible property in the CDD must undergo development before the owner of the property can participate in the Development Support Program.

**DEFINITIONS**

- 7 **Development** means investment that, in the opinion of the CBRM, results in an increase in the productive use of an Eligible Property or a building on an Eligible Property, and includes, but is not limited to, construction of a new building, remediation of the property or the expansion or renovation of an existing building to realize more effective use of the Eligible Property's potential.
- 8 **Owner** means the person named on the assessment roll as responsible for the taxes for the eligible property in the CDD.
- 9 **Development Support Program** is a program designed to stimulate building construction and the expansion of the economy of the CBRM.
- 10 **Base Year Taxable Assessed Value** means the Taxable Assessed Value applicable for the taxation year in which a Phased-In Assessment Agreement is signed for the eligible property upon which development is to be constructed or completed.
- 11 **Actual Taxable Assessed Value** means the Taxable Assessed Value pursuant to the published assessment roll applicable for the taxation year in which the Rebate Eligible Assessment is to be determined, subject to any adjustments to taxes arising from assessment appeals or changes to the Taxable Assessed Value made by PVSC through requests for reconsideration.
- 12 **Rebate Eligible Assessment** means the amount calculated using the following formula
- Rebate Eligible Assessment = Actual Taxable Assessed Value - Base Year Taxable Assessed Value.
- 13 **Phased In Assessment Agreement** is an agreement signed by the parties, which provides specifics of the eligible property in the CDD and is written in substantially the same form as the Agreement set out in Appendix "B" of this By-law.

**PHASED-IN ASSESSMENT AGREEMENT**

- 14(1) As a condition of the Development Support Program, an owner of an eligible property must enter into an agreement with the CBRM (hereinafter referred to as the "Phased-In Assessment Agreement"). The Phased-In Assessment Agreement signed by the parties will be substantially the same as the form agreement attached as Appendix "B" to this By-Law and forming part of the By-Law.
- 14(2) A Phase-In Assessment Agreement is intended to compliment and provide specifics for the subject property. The eligibility criteria for the Development Support Program and the limits on the program are as established in this By-Law. In the event of a conflict between a Phased-In Assessment Agreement and the By-Law, the provisions of this By-Law shall prevail.

**REBATE CALCULATION**

- 15 For eligible properties where the increase in assessment is \$100,000 or greater, the development rebate shall extend over a ten year period (refer to Table One, below). For eligible properties where the increase is less than \$100,000 the development rebate shall extend over a period of five years (refer to Table Two, below). An annual development rebate amount shall be calculated each year as the following percentage of the equivalent of the Rebate Eligible Assessment:

| <b>Table One</b> |                               |
|------------------|-------------------------------|
| Year             | Grant (as % of tax increment) |
| 1                | 90                            |
| 2                | 80                            |
| 3                | 70                            |
| 4                | 60                            |
| 5                | 50                            |
| 6                | 50                            |
| 7                | 40                            |
| 8                | 30                            |
| 9                | 20                            |
| 10               | 10                            |
| <b>Table Two</b> |                               |
| Year             | Grant (as % of tax increment) |
| 1                | 90                            |
| 2                | 70                            |
| 3                | 50                            |
| 4                | 20                            |
| 5                | 10                            |

**REBATE LIMITS**

- 16 The total of development rebates provided to an owner over the term of participation in the program must not result in the calculation of the total increase in taxes payable during the phase-in period being less than fifty per cent of the total increase in taxes that would be payable during the same period in the absence of the application of the program formula.

**ADJUSTMENTS**

- 17 In the event there are any subsequent changes in the total taxes payable in any year due to reductions resulting from assessment appeals, and where such tax changes occur after rebate amounts have been paid, future year rebate entitlements may be reduced accordingly. Any overpayment of rebate amounts arising from subsequent assessment or tax reductions will be deemed to be a debt owing to the CBRM.

**DURATION**

- 18 Development rebates will only become payable to the owner after the eligible property is first reassessed by the PVSC to fully reflect the development that the owner is receiving the rebate for.
- 19 All rebates will cease if during the program term the building is demolished except to expand an eligible use. Rebate amounts that would have been payable in the year in which the demolition occurs will be adjusted on a pro-rated basis to reflect the date of the demolition and will cease thereafter

**STAGED DEVELOPMENT**

- 20 In the case of a staged development, where one portion of a property is developed in advance of others, each portion of the property will be treated as a separate eligible property. The first rebate payment of the component of the Development Support Program will be based on the Rebate Eligible Assessment arising from the increased assessment on the first portion of the development. As other portions of the eligible property are developed, and which result in further assessment increases, the property owner may apply to further participate in the Development Support Program based on the additional Rebate Eligible Assessment, subject to the continued availability of the Development Support Program and the owner's ability to meet the eligibility requirements and rebate entitlements in place at that time.

**CONDOMINIUMS**

- 21 If a development of an eligible property is condominiumized, each commercially assessed condominium unit will be treated as a stand-alone eligible development and must be able to meet all eligibility requirements of the Development Support Program, independent of other condominium units.

**REPEAL**

- 22(1) In the event that this By-Law, or any portion thereof, is repealed, any owner who has been accepted to participate in the Development Support Program prior to the date of repeal, will benefit from the Development Support Program, as applicable, in accordance with this By-Law, despite its whole or partial repeal.
- 22(2) In the event of a repeal in (1). for the owners who are accepted into the program as of the date of the repeal, this By-law will continue to be considered to be in force and effect only for the limited purpose of providing for the continuation of the Development Support Program for those owners until the ten year or five year maximum term is completed or the owners participation in the Development Support Program is discontinued.

**OTHER CONDITIONS**

- 23 An owner's application to the Development Support Program must be made subsequent to the issuance of the first building permit for the development on the eligible property.



- 24 All proposed development must conform to all Provincial laws, CBRM by-laws, policies, and processes and all improvements must be made pursuant to an approved Building Development Permit and applicable zoning requirements and development approvals.
- 25 The applicant must be the owner of the eligible property or have the owner's written authorization to apply for the Development Support Program.
- 26 The owner of an eligible property must not be in arrears of property taxes or other fees and charges on any property in CBRM legally registered in the name of the applicant on the date that the Phased-In Assessment Agreement is signed.

#### **PAYMENT**

- 27 Rebates may be provided once annually, in the last quarter of the year, provided that:
  - A. there are no outstanding taxes, water rates, or other sums owed to the CBRM with respect to any property within the CBRM that is legally registered in the name of the applicant;
  - B. there are no outstanding work orders and/or orders or requests to comply from any municipal or provincial entity; and
  - C. all other eligibility criteria and conditions are met.
- 28 Development rebates will not be applied as tax credits against property tax accounts.
- 29 In case of an assessment appeal, the CBRM reserves the right to withhold any forthcoming Development Rebates pending final disposition of the appeal.
- 30 For applicants on preauthorized payment arrangements, once a rebate has been processed, the total taxes levied, net of the rebate for the taxation year must be paid no later than March 31. Failing this condition, the rebate shall be reversed and interest will be assessed on the balance owing.

#### **REVIEW**

- 31 In accordance with Section 71E of the Municipal Government Act, this By-law shall be reviewed by the CBRM within four years of its coming into force and every four years thereafter.

THIS IS TO CERTIFY THAT this By-law was passed by the Council of the Cape Breton Regional Municipality at a duly constituted meeting of said Council held the 18<sup>th</sup> day of September, 2018.

Signed by the Mayor and Municipal Clerk on this 21<sup>st</sup> day of September 2018.

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**Cecil P. Clarke**  
Mayor

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**Deborah Campbell Ryan**  
Municipal Clerk

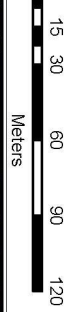
## **APPENDIX “A”**

### **MAPS**



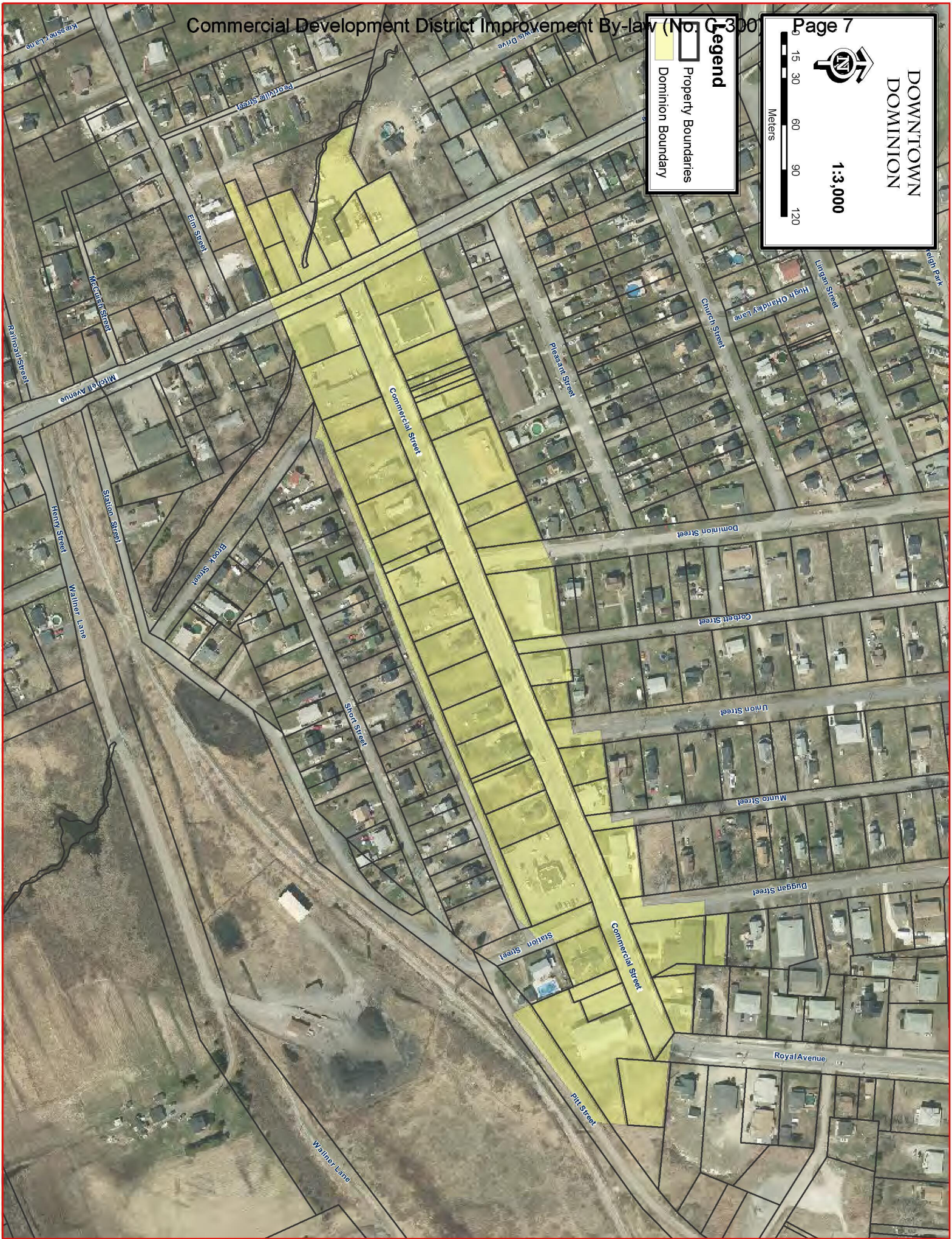
DOWNTOWN  
DOMINION

1:3,000



**Legend**

- Property Boundaries
- Dominion Boundary

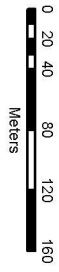








DOWNTOWN  
NORTH SYDNEY

1:5,000



**Legend**

-  Property Boundaries
-  North Sydney Boundary







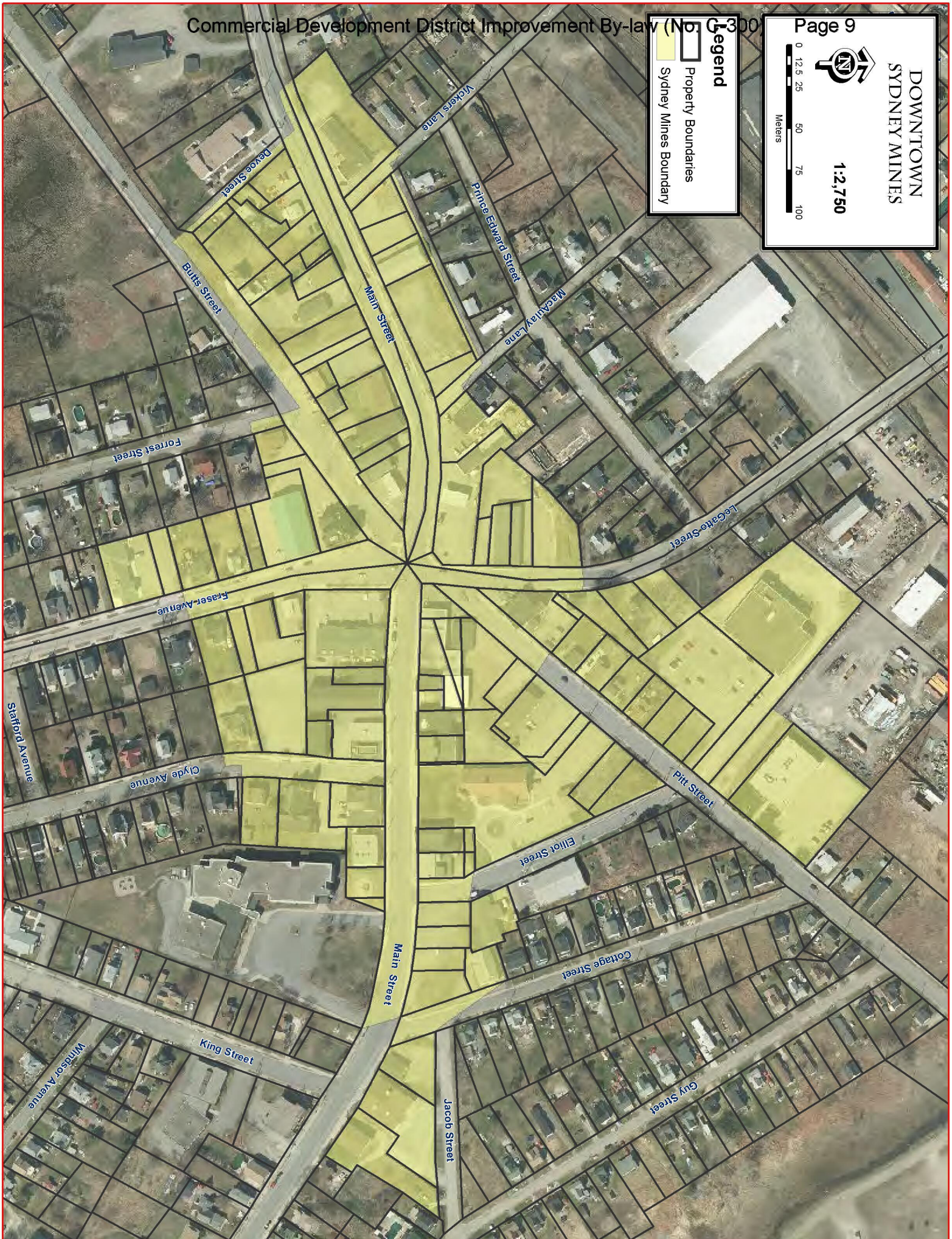
DOWNTOWN  
SYDNEY MINES

1:2,750



**Legend**



-  Property Boundaries
-  Sydney Mines Boundary

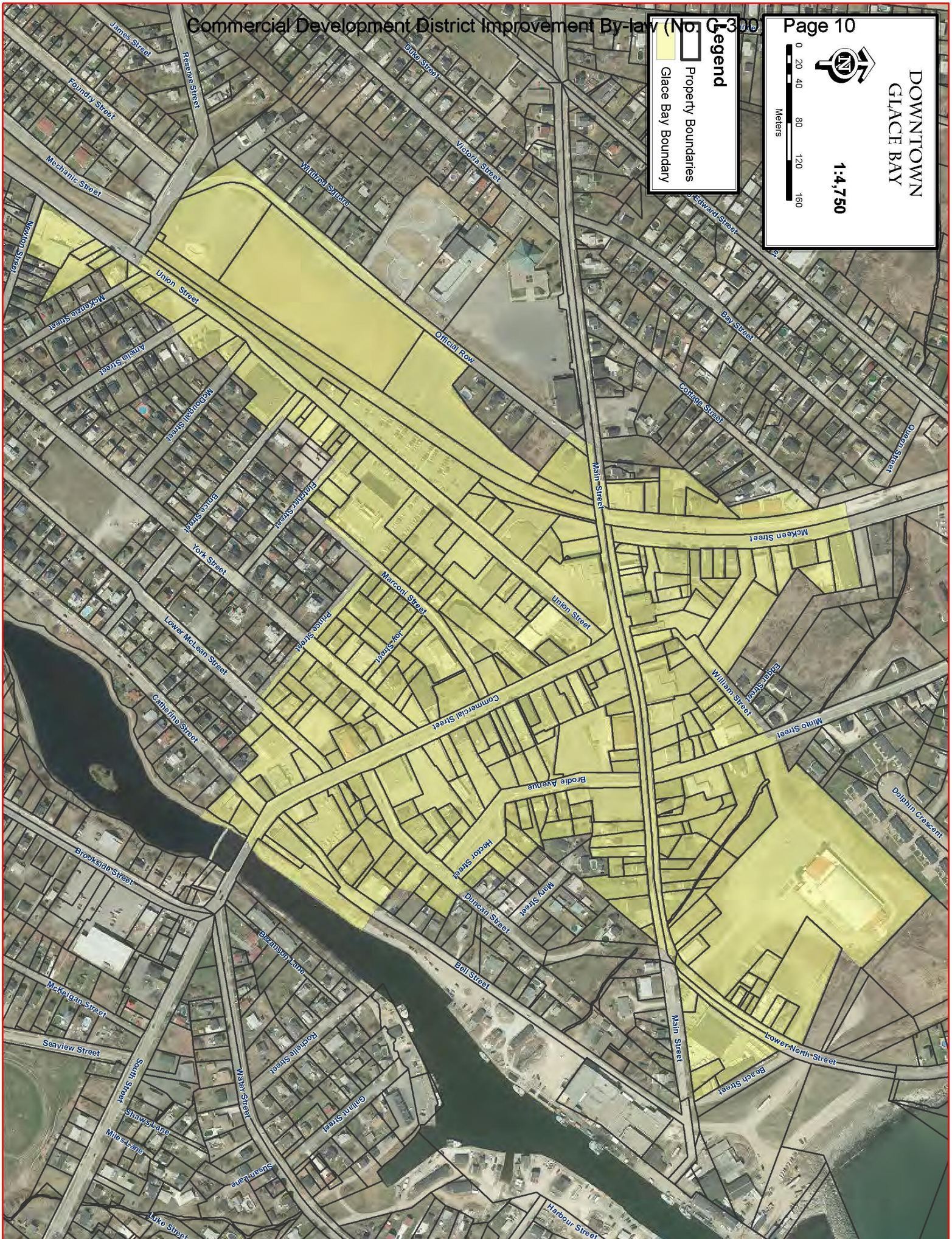






**Legend**

-  Property Boundaries
-  Glace Bay Boundary







**Legend**

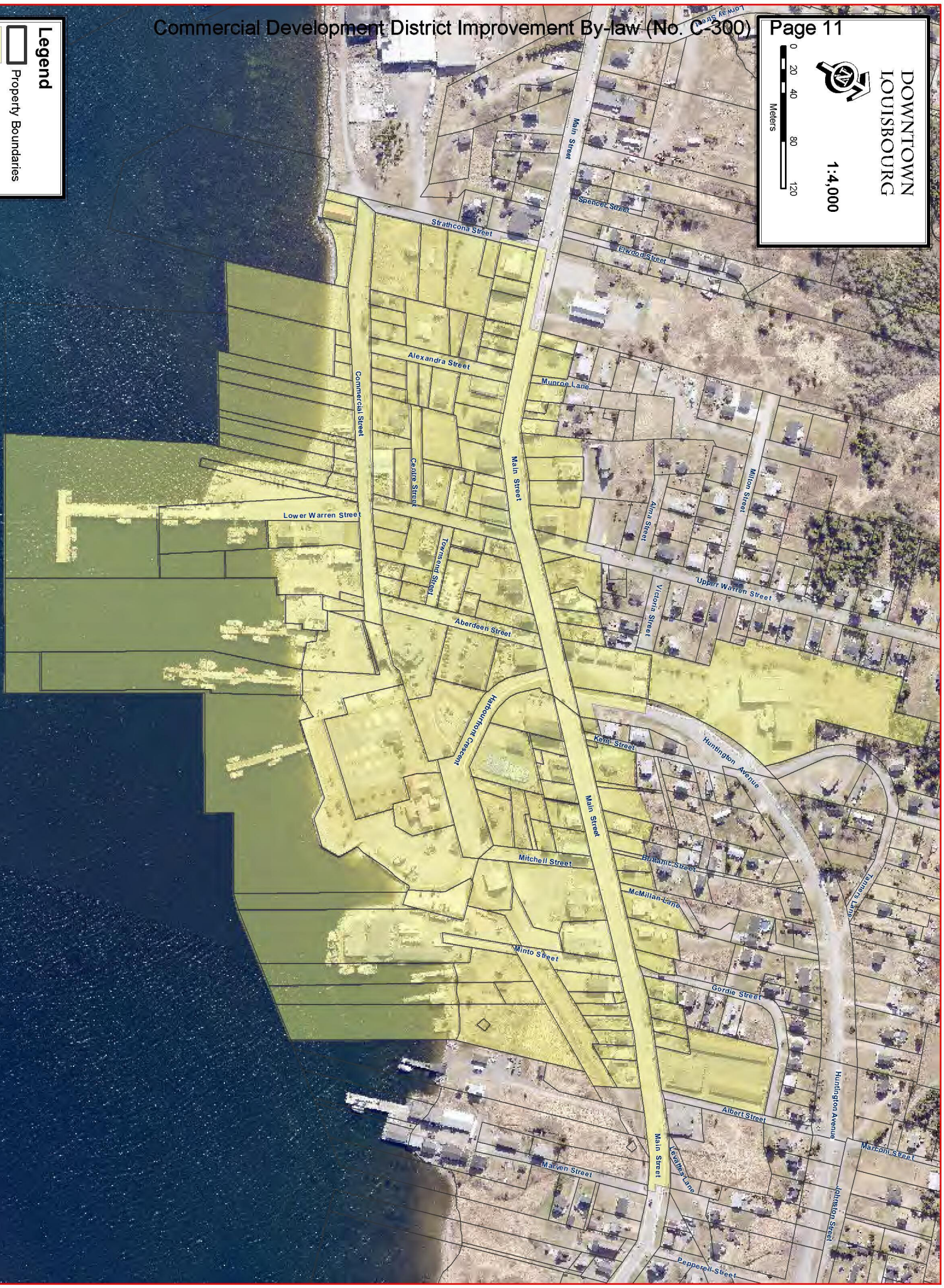
-  Property Boundaries
-  Louisbourg Boundary

**DOWNTOWN  
LOUISBOURG**

**1:4,000**



  
0 20 40 80 120  
Meters





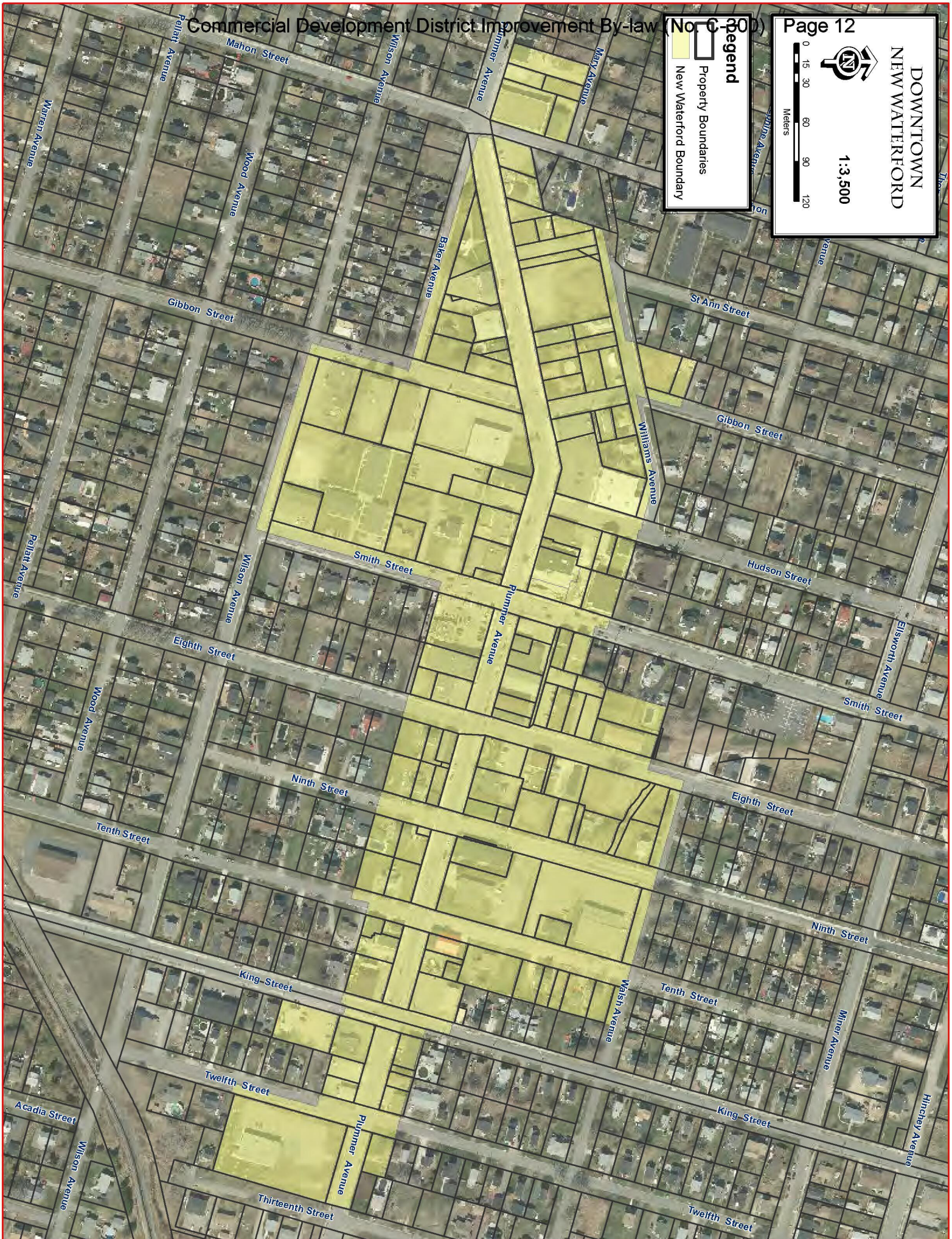


1:3,500



Legend

- Property Boundaries
- New Waterford Boundary

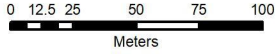




DOWNTOWN  
WHITNEY PIER

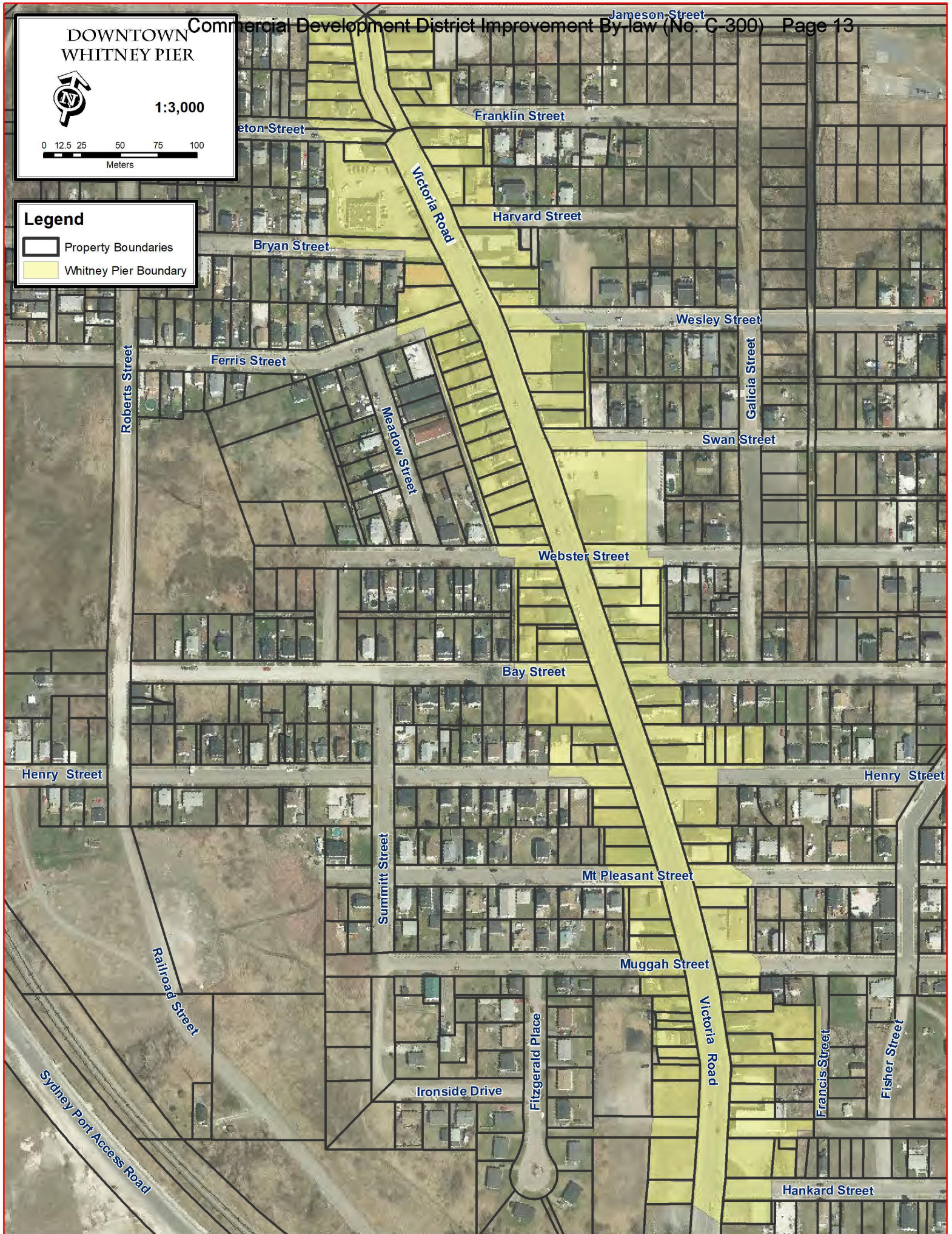


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Legend

- Property Boundaries
- Whitney Pier Boundary







# HARBOURSIDE INDUSTRIAL PARK

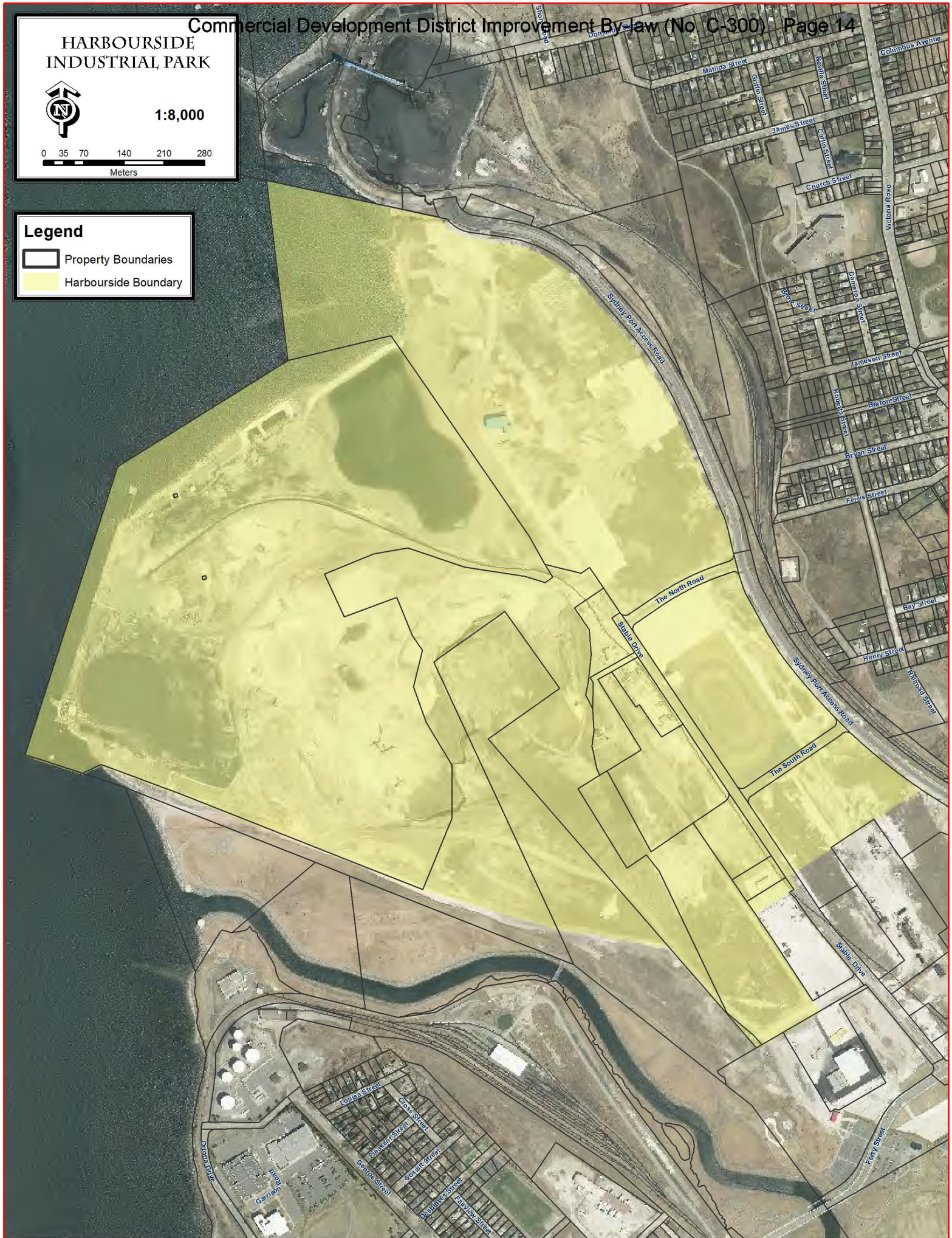


1:8,000

0 35 70 140 210 280  
Meters

## Legend

-  Property Boundaries
-  Harbourside Boundary



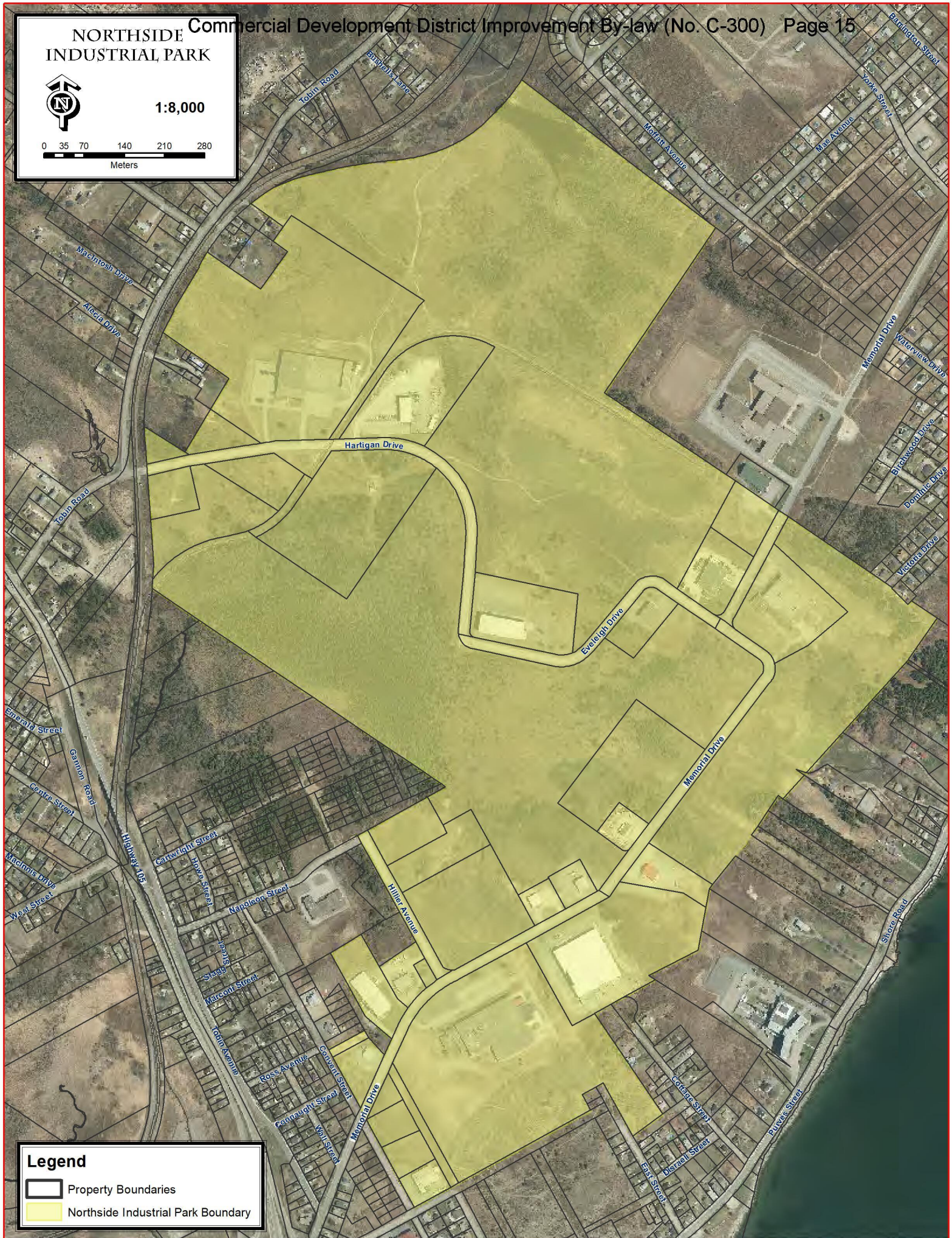


NORTHSIDE  
INDUSTRIAL PARK



1:8,000

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Meters



Legend

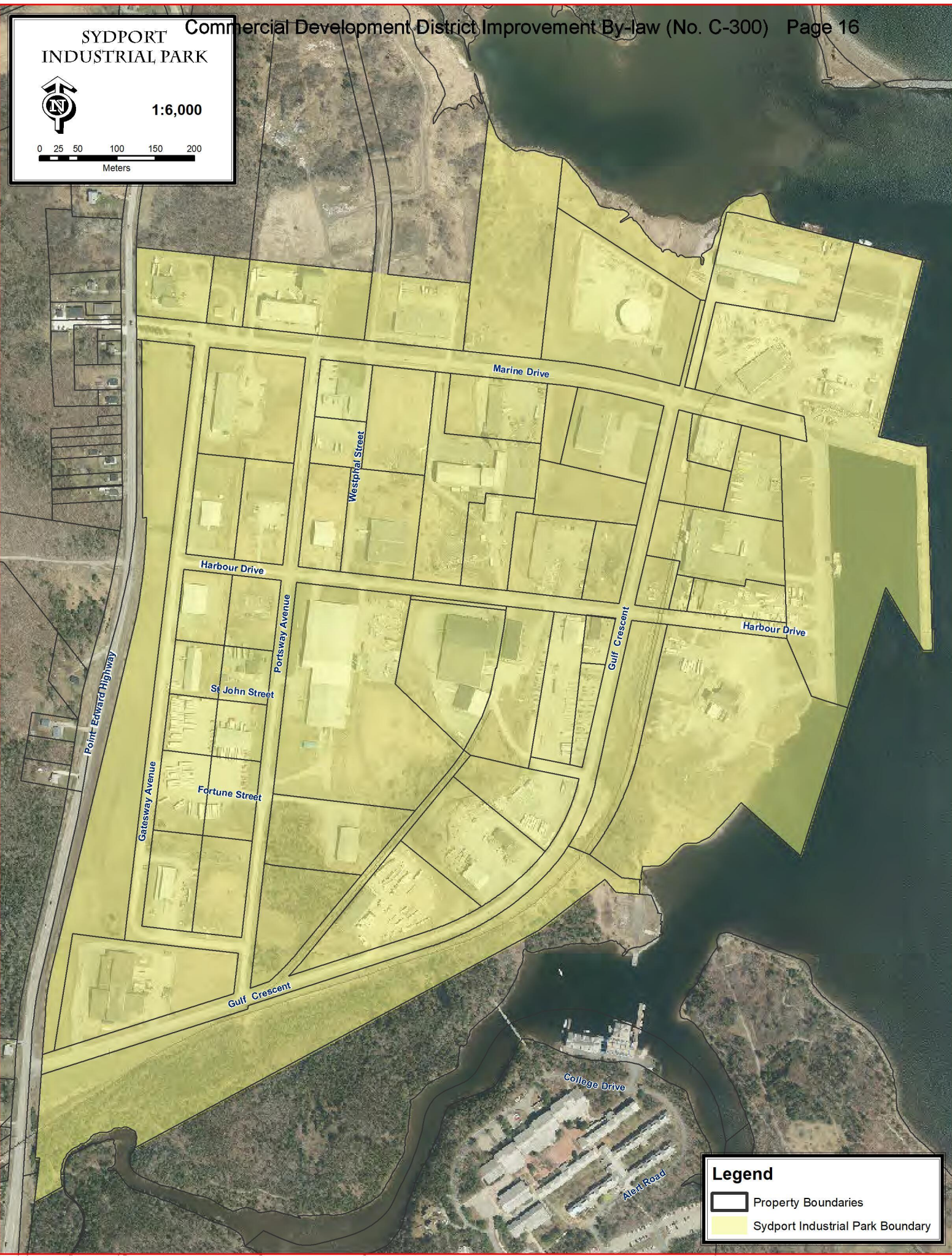
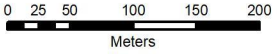
- Property Boundaries
- Northside Industrial Park Boundary





SYDPORT  
INDUSTRIAL PARK



1:6,000



Legend

-  Property Boundaries
-  Sydport Industrial Park Boundary





DOWNTOWN SYDNEY

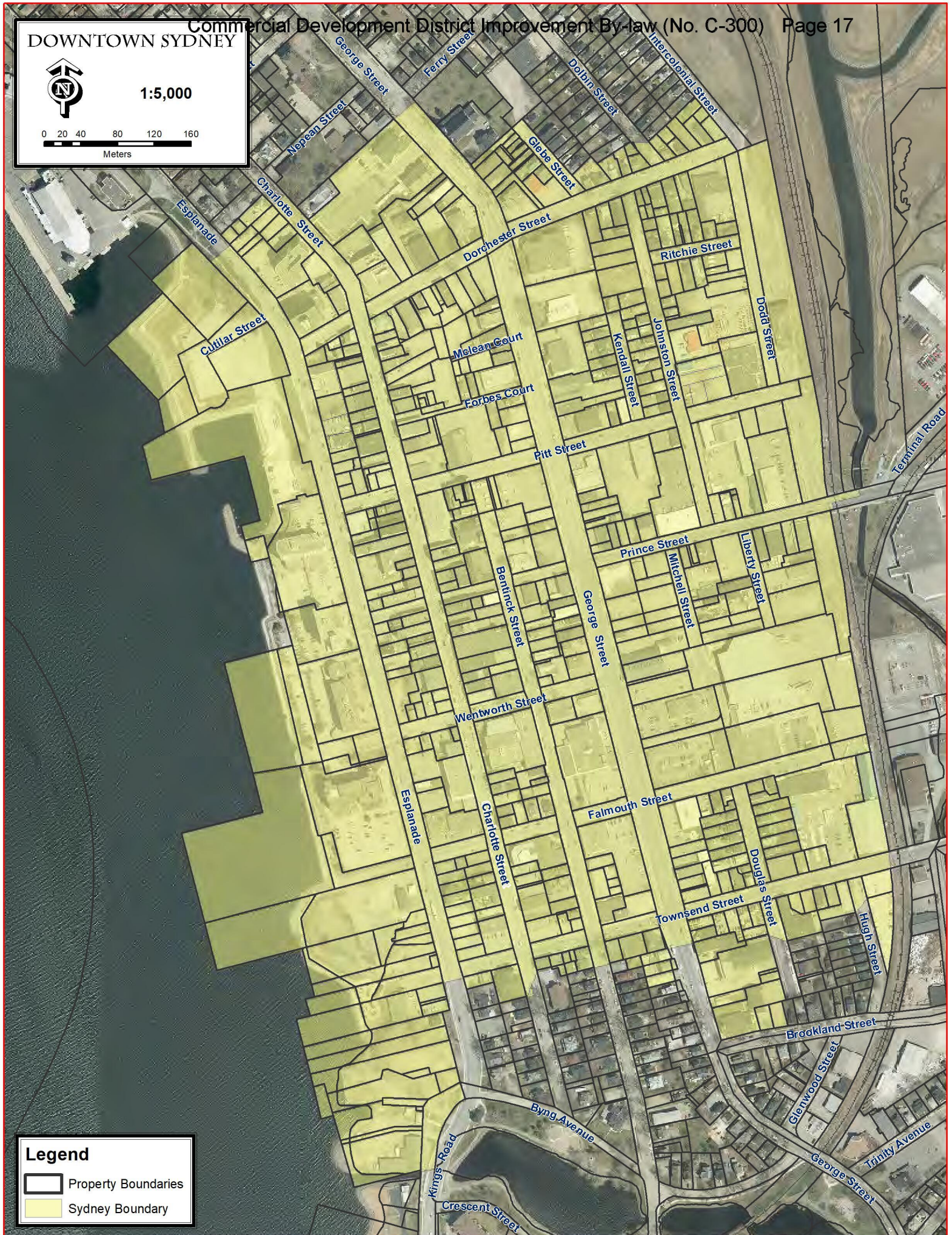


1:5,000

0 20 40 80 120 160  
Meters

Legend

-  Property Boundaries
-  Sydney Boundary





**APPENDIX "B"**  
**Cape Breton Regional Municipality Phased In Assessment Agreement**

**THIS AGREEMENT** made as of the day of \_\_\_\_\_, 20\_\_\_\_

BETWEEN:  
(the "Applicant")

– and –

CAPE BRETON REGIONAL MUNICIPALITY  
(the "CBRM")

**WHEREAS** the CBRM adopted By-Law \_\_\_\_\_, cited as the "Commercial Development District Improvement By-law" (also known as the 'CDD By-law'), a partial rebate program consisting of annual rebates to participating owners who undertake development on eligible property in a Commercial Development District as defined by the Municipal Planning Strategy.

**AND WHEREAS** the Applicant is the registered owner or the person having the owner's authorization, of an eligible property which is located within a Commercial Development District and has applied to the CBRM for participation in the Development Support Program for the Property described below in Section 1 of this Agreement; (the "Property");

**AND WHEREAS** the CBRM requires that a Phased-In Assessment Agreement be entered into between the Applicant and the CBRM;

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the premises, covenants and agreements hereinafter contained on the part of the Applicant to be observed, fulfilled and performed as hereinafter required and the approval of the Applicant's application for participation in the Development Support Program by the CBRM, subject to and in accordance with, the terms and conditions of this Agreement, the parties covenant and agree as follows:

**1 PROPERTY INFORMATION:**

Applicant:

Name of registered Property Owner:

Address of Property:

Property Identification Number(s):

Mailing Address of Owner:

Name of Agreement Recipient:

Mailing Address of Recipient:

**2 DEFINITIONS**

Save and except as may be otherwise defined in this Agreement, the definitions of terms used in this Agreement shall be the same as the definitions for those terms as set out in the CDD By-law (By-law No. \_\_\_\_), and Section 71C of the *Municipal Government Act*, C18 of the Acts of 1998.

*Please note: the terms Actual Taxable Assessed Value, Base Year Taxable Assessed Value, Development, Rebate Eligible Assessment are defined in the CDD By-law.*

The following terms shall have the meanings set out below:

- 2.1 **Agreement** means this Phased-In Assessment Agreement which is entered into between the parties pursuant to sections 71C and 71D of the *Municipal Government Act*, and the CDD By-law enacted by the Council of the CBRM and as amended from time to time.
- 2.2 **Applicant** means the owner, of the property, or a person having the owner's authorization to apply for the Development Support Program.
- 2.3 **CAO** means the Chief Administrative Officer of the CBRM. The CAO is the approving authority for purposes of this Agreement where authority is not required to come from Council.
- 2.4 **CFO** means Chief Financial Officer of the CBRM.
- 2.5 **Development Support Program** means program established by the CDD By-law for a maximum period of 10 years.
- 2.6 **Development Rebate** means annual rebate amount calculated each year as set out in section 15 of the CDD By-law.
- 2.7 **Eligible Use** means uses permitted as set out in the CBRM Municipal Planning Strategy and Land Use By-Law on a commercial assessed property located within the Commercial Development District.
- 2.8 **Owner** means the registered owner(s) of the Property at the date this Agreement is signed.
- 2.9 **Property** means the Property described in Section 1 and Schedule "A" of this Agreement.
- 2.10 **Recipient** means the Applicant, authorized to receive a development rebate.
- 2.11 **CBRM Solicitor** means the lawyer appointed by the CBRM for the purpose of registering this Agreement in the Registry of Deeds or under the Land Registration System, whichever is applicable.

**3 PARTICIPATION IN DEVELOPMENT REBATES PROGRAM**

- 3.1 The Applicant's participation in the Development Support Program is conditional on the Applicant ensuring that at all times the following conditions are met:
- (a) the objectives and participation requirements of this Agreement and the CDD By-law, attached as Schedule "B" to this Agreement, are met from year to year;
  - (b) all applicable Provincial and CBRM requirements, policies and procedures are met;
  - (c) the Applicant is in compliance with all of the terms and conditions of this Agreement and is in conformance with all Building Development Permits and other regulatory approvals pertaining to the Property; and
  - (d) the property has undergone development.

**4 DEVELOPMENT REBATE FUNDING CALCULATION**

- 4.1 A development rebate is calculated by the CFO as a percentage of the Rebate Eligible Assessment as shown in Schedule "E" to this Agreement.
- 4.2 Prior to the commencement of the Development Support Program, the CFO shall determine the Base Year Taxable Assessed Value used to calculate the Annual Rebate Eligible Tax Assessment and the corresponding annual development rebate payable for development. Following this determination, Schedule "E" will be amended annually to show the Actual Taxable Assessed Value, the Rebate Eligible Taxes, and the annual development rebate amount payable as determined by the CFO.
- 4.3 The Applicant shall have an opportunity to review the CFO's calculation of the Base Year Taxable Assessed Value prior to the finalization of Schedule "E", however, the CFO's determination as to the calculation of the Base Year Taxable Assessed Value, and the amount of the development rebate, shall be final.
- 4.4 In calculating the annual Development Rebate payable for the development, the Rebate Eligible Assessment shall be calculated annually from the first year that the subject Development Rebate is payable, or the first year that the Owner elects to make the Annual Taxable Assessed Value election in accordance with this Agreement CDD By-law.
- 4.5 The Development rebate will be reduced by the CFO for the year in which a development rebate is paid, to reflect the amount of any rebate(s) of municipal taxes paid to the Owner, including but not limited to rebates to reflect charitable status tax rebates related to the development. Any such reductions shall be in an amount reflecting the product of the municipal portion of taxes rebated and the development rebate percentage level applicable to that year.
- 4.6 The total of development rebates paid over a ten year or five year maximum term of the program must not result in the calculation of the total increase in taxes payable during the phase-in period being less than fifty (50%) percent of the total increase in taxes that would be payable during the same period in the absence of the application of the formula.



**Rebate Eligible Assessment**

- 4.7 Subject to sections 4.9 and 4.10 of this Agreement, the Base Year Taxable Assessed Value shall remain fixed for the duration of the Development Support Program.
- 4.8 The Rebate Eligible Assessment will be amended by the CFO, as necessary, to reflect changes to the total Municipal Property Taxes payable in any year, as a result of successful assessment appeals, requests for reconsideration by PVSC, equity changes, gross errors or other changes to Actual Taxable Assessed Value that have the effect of changing the amount used to calculate the Actual Taxable Assessed Value.
- 4.9 Where the Rebate Eligible Assessment is amended in accordance with section 4.8, future development rebates shall be adjusted accordingly for the duration of the Development Support Program period. Such adjustments may reflect any overpayment of development rebate arising from successful assessment appeals that occur subsequent to the commencement of payment of development rebates.
- 4.10 If at any time the Owner appeals any assessment relating to the development that, in the opinion of the CAO, may impact the calculation of the Rebate Eligible Assessment, the CBRM shall withhold any or all of the development Rebate that would otherwise be paid for the development, based on a reasonable estimate of the reduction in assessment being sought, pending final disposition of the appeal. If as a result of the decision of the appeal body, the Actual Taxable Assessed Value is reduced below the amount determined in calculating the Rebate Eligible Assessment, then the reduced Rebate Eligible Assessment shall be the basis for determining the development rebate payable under this Agreement.
- 4.11 Where sections 4.9 and 4.10 apply, any overpayment of a development rebate arising from subsequent assessment or tax reductions will be deemed to be a debt owing to the CBRM which the Owner shall pay forthwith together with the same interest charged for overdue accounts by the CBRM.
- 4.12 If at any point after the development is complete, additional work is proposed on the Property that is not part of the original Program application, but may serve to further increase the current year tax assessed value, such additional work shall not be included in the calculation of the development rebate in this Agreement, but may be the subject of a further Development Support Program application, subject to the continued availability of the Development Support Program and the eligibility requirements and rebate entitlements in effect at that time.

**5 FUNDING PAYMENT**

- 5.1 Subject to Section 6 of this Agreement, development rebate payments to a maximum of ten (10) annual payments will commence being paid the first taxation year in which the Rebate Eligible Assessment is capable of being determined.
- 5.2 Development rebates cannot be applied as tax credits against the Property tax account.

**6 CONDITIONS OF PAYMENT**

- 6.1 The CAO shall determine whether the Applicant has satisfied the participation requirements of this Agreement and the Schedules attached hereto.
- 6.2 A development rebate will only become payable after the property is first reassessed by the PVSC to fully reflect the development for which the Applicant might receive a rebate.
- 6.3 A rebate can only be paid once annually, in the last quarter of the year, provided that:
- (a) there are no outstanding taxes, water rates, or other sums owed to the CBRM with respect to the property and other properties in the CBRM legally registered in the name of the applicant;
  - (b) there are no outstanding work orders and/or orders or requests to comply from any municipal or provincial entity; and
  - (c) all other required criteria and conditions are met.

**7 OWNERS OBLIGATIONS****Compliance with Rebate Application**

- 7.1 The Applicant shall undertake the development in accordance with the Development Support Program.

**Compliance with CBRM Directives**

- 7.2 The Applicant shall strictly comply with and observe all material requirements, stipulations, guidelines and directives related to the Development Support Program as required by the CBRM, and shall undertake all necessary courses of action to ensure compliance.

**Compliance with Legislation**

- 7.3 The Applicant agrees that the development shall be completed in compliance with all required Building Development Permits, and constructed in accordance with the Nova Scotia Building Code Act and all applicable Land-Use By-law requirements, Municipal requirements and other approvals required at law.

**Demolition/Conversion**

- 7.4 The Applicant covenants to the CBRM that the development will not be demolished, in whole or in part or converted to an ineligible use, in whole or in part, prior to the advance of all of the payments over the term of this Agreement unless such demolition is required to enable Property enhancement approved by the CBRM under the terms of this Agreement.
- 7.5 The Applicant shall ensure that the Property is maintained in its redeveloped condition in accordance with this Agreement and is in compliance with all applicable Municipal policies and By-laws.
- 7.6 The Applicant further covenants that if at any time during the Development Support Program the building which underwent development is demolished, in whole or in part, or

converted to an ineligible use, in whole in part, the CAO, in his or her sole discretion will cease to advance future development rebates or reduce the amount of future development rebates on a pro-rated basis to reflect the date of the demolition or conversion.

### **Payment of Costs**

- 7.7 The Applicant acknowledges that without limiting the generality of the other provisions of this Agreement:
- (a) the onus and responsibility is upon the Applicant at all times to assume all costs of development and to apply for and obtain, at the Applicant's expense, all approvals and permits required from the CBRM and all other agencies including but not limited to all Municipal Planning Strategy Amendments, Land Use By-law amendments, minor variances, site plan approval and building development permits in accordance with all applicable legislation; and
  - (b) the Owner remains responsible at all times for the payment in full of all amounts in respect of property taxes, water and any other charges that may be levied by the CBRM relating to the Property as and when they fall due.

### **Building Development Permits**

- 7.8 Applications for Development Support Program must be made after the issuance of the first Building Development Permit for the development.

## **8 ASSIGNMENT**

- 8.1 The Applicant covenants to the CBRM that if the Owner intends to sell, transfer or assign the Property or if for any reason the Property ceases to be registered in the Owner's name prior to the advance of all of the development rebate payments, the Applicant will immediately notify the CAO in writing of such change or proposed change of ownership.
- 8.2 The payment of development rebates shall cease upon the sale, transfer or assignment of the Property, unless, prior to the completion of such sale, transfer or assignment, the Owner and the new owner enter into an agreement with the CBRM, in a form and content satisfactory to the CAO and the CBRM Solicitor, in which it is agreed that the new owner shall have the right to participate in the Development Support Program.
- 8.3 Where the Applicant wishes to assign the right to receive the development rebates to a recipient, who is not a new owner, the CAO, in the CAO's sole discretion, may agree to the assignment provided that the Recipient with the written consent of the owner enter into an agreement with the CBRM, in a form and content satisfactory to the CAO and the CBRM Solicitor, acting reasonably, in which it is agreed, that such assignment shall not relieve the Applicant of any of the Applicant's obligations and responsibilities under this Agreement, nor shall it affect in any way the CBRM's rights under this Agreement.
- 8.4 It is the responsibility of the Applicant or Owner to provide in writing to the CAO change in Recipient. It is at the discretion of the CAO to determine if an adjustment to the development rebate identification of a new Recipient by the Applicant.

## **9 CBRM RIGHTS**

### **No Representation**

- 9.1 Nothing in this Agreement shall be construed to be a representation by the CBRM regarding compliance of the Property with any applicable legislation, regulations, policies, standards, permits, approvals or by-laws.

### **No Claim for Compensation or Reimbursement**

- 9.2 In the event that any of the conditions of this Agreement are not fulfilled and a development rebate is not advanced, or required to be repaid, or the development rebate payments cease, or are delayed, the Applicant and Owner agrees that notwithstanding any costs or expenses incurred by the Applicant or Owner, the Applicant or Owner shall not have any claim for compensation or reimbursement of these costs and expenses against the CBRM and that the CBRM is not liable to the Applicant or Owner for losses, damages, interest, or claims which the Applicant or Owner may bear as a result of the lapse of time (if any) where the CBRM is exercising its rights herein to either delay a payment pending the Applicant or Owners' compliance with this Agreement, or to terminate this Agreement.

## **10 DEFAULT AND REMEDIES**

- 10.1 Subject to section 10.3, on the occurrence of a Default under this Agreement, the CBRM shall be entitled to all available remedies to terminate or enforce this Agreement, including, but not limited to:

- (a) immediate termination and cessation or delay of the release of a development rebate otherwise payable to the Applicant; and
- (b) requiring the Applicant or Owner to immediately repay to the CBRM all or a portion of any development rebates paid to the Applicant or Owner together with interest at the established CBRM Rate.

- 10.2 A default under this Agreement ("Default") shall be deemed to occur upon the failure of the Applicant or Owner to perform any of the obligations of the Applicant or Owner contained in this Agreement or to comply with all of the terms and conditions contained in this Agreement, including, but not limited to, the following:

- (a) failure by the Applicant or Owner to satisfy the minimum requirements as set out in this Agreement and the CDD By-law;
- (b) failure by the Applicant or Owner in any material respect, to perform any of the obligations contained in this Agreement;
- (c) failure by the Applicant or Owner to pay and keep in good standing all real property taxes with respect to the Property and all other charges against the Property in favour of the CBRM, including but not limited to development charges, special assessments, local improvement charges, sewer and water and utility rates.
- (d) the making of an assignment by the Applicant or Owner for the benefit of creditors, or if the Applicant or Owner assigns in bankruptcy or takes advantage of any statute for relief in bankruptcy, moratorium, settlement with creditors, or similar relief of

- bankrupt or insolvent debtors; receipt of a receiving order against the Applicant or Owner, or if the Applicant or Owner is adjudged bankrupt or insolvent, or if a liquidator or receiver is appointed by reason of any actual or alleged insolvency, or any default of the Applicant or Owner under any mortgage or other obligation, or if the Property or the interest of the Applicant or Owner in the Property is taken or sold by any creditors or under any writ of execution or other like process;
- (e) failure by the Applicant or Owner to remain in contact with the CBRM such that the CBRM is unable to contact the Applicant or Owner for a period of time exceeding one (1) year.
  - (f) any representation or warranty made by the Applicant or Owner in this Agreement or the Development Support Program is incorrect in any material respect.
  - (g) willful defaults by the Applicant or Owner in the payment of moneys to any contractor, supplier or creditor, who has undertaken the works that are the subject of this Agreement,
- 10.3 If a Default occurs, the CBRM shall give written notice to the Applicant or Owner specifying the nature of the Default. The Applicant or Owner shall then have sixty (60) days, or such additional time as may be agreed to by the CBRM, acting reasonably, from the receipt of such notice of Default to rectify the Default, during which time all Development rebate payments may, in the CAO's sole discretion, be suspended, provided that if the Default is such that it cannot with due diligence be wholly rectified within sixty (60) days, or such additional period of time as may be agreed to by the CAO, and the Applicant or Owner has commenced and continues diligently working to correct the Default, the Applicant or Owner shall not be deemed to be in default of this Agreement so long as it proceeds with due diligence to rectify the Default. If the Applicant or Owner fails to rectify the Default within the sixty (60) day time period or such additional time as may be agreed to by the CAO, and provided that the Applicant or Owner has not commenced and continued diligently working to correct the subject Default, the CAO shall have the option, in the CAO's sole discretion, to exercise the remedies under Subsection 10.1.
- 10.4 Wherever in this Agreement the CBRM requires repayment of all or part of any Development rebate and the Applicant or Owner fails to repay as required the unpaid amounts shall be deemed to be a debt owing to the CBRM, and may constitute a lien on the property, together with interest at the CBRM rate.

## **11 INDEMNITY**

- 11.1 The Applicant or Owner shall indemnify, save, defend and keep harmless from time to time and at all times, the CBRM and its elected officials, officers, employees and agents from and against all claims, actions, causes of action, interest, demands, costs, charges, damages, expenses and loss made by any person arising directly or indirectly:
- (a) in respect of any failure by the Applicant or Owner to fulfill its obligations under this Agreement; and
  - (b) in respect of any loss, damage or injury (including death resulting from injury) to any person or property, however caused, directly or indirectly, resulting or sustained by

reason of any act or omission of the Applicant or Owner or any person for whom the Applicant or Owner is in law responsible in connection with any of the purposes set out in this Agreement or the failure by the Applicant or Owner to fulfill its obligations under this Agreement;

This indemnification shall, in respect of any matter arising prior to the termination of this Agreement, remain in force following termination or expiry of this Agreement.

## **12 ADDITIONAL PROVISIONS**

### **Term**

12.1 This Agreement shall remain in effect from the date of its execution by the CBRM to the earlier of:

- (a) the Applicant informing the CBRM in writing prior to the first development rebate payment that it has decided not to accept any development rebates;
- (b) subject to the provisions of section 10 of this Agreement, the CBRM informing the Applicant or Owner in writing that due to the nonfulfillment of a required condition or due to Default, this Agreement is at an end;
- (c) the expiry of the Development Support Program period after 10 years; and
- (d) the Applicant informing the CBRM in writing at any point after receiving the first development rebate payment, that it no longer wishes to receive development rebates.

### **Time of the Essence**

12.2 Time shall be of the essence with respect to all covenants, agreements and matters contained in this Agreement.

### **Extension of Time**

12.3 Where a time limit or deadline is provided for under this Agreement, the CAO, acting reasonably, may extend such time limit or deadline without an amendment to this Agreement.

### **Schedules**

12.4 The following Schedules are attached to and form part of this Agreement:

- Schedule "A" Example of Development Rebate Calculation
- Schedule "B" CDD By-law
- Schedule "C" Development Support Program
- Schedule "D" List of Development Plans
- Schedule "E" Development Rebate Calculation

### **Survival of Covenants**

12.5 Any terms or conditions of this Agreement that require performance by the CBRM or the Applicant or Owner after the expiration or other termination of this Agreement remain enforceable notwithstanding such expiration or other termination of this Agreement for any reason whatsoever.

**Notice**

12.6 Any notice required to be given by either party to the other shall be given in writing and delivered in person or by facsimile transmission to:

- (a) In the case of the CBRM to:  
Attn: Chief Administrative Officer, CBRM,  
320 Esplanade  
Sydney, Nova Scotia  
B1P 7B9
- (b) In the case of the Applicant to:
- (c) In the case of the Owner to:

Notice shall be deemed to have been received on the day of personal delivery or facsimile transmission if such day is a business day and delivery is made prior to 4:00 p.m. and otherwise on the next business day. The parties agree to notify each other immediately, in writing, of any changes of address from those set out above.

**Entire Agreement**

12.7 This Agreement and the Schedules attached to it constitute the entire Agreement between the parties and there are no agreements collateral to it other than as referred to herein and no representations or warranties, express or implied, written or verbal, statutory or otherwise, other than as expressly set forth or referred to in this Agreement.

**Municipal Government Act**

12.8 Nothing in this Agreement limits or fetters the CBRM in exercising its statutory jurisdiction under the *Municipal Government Act*, or under any other legislative authority or By-law and in the event that the CBRM decides to grant or deny any request or oppose or appeal any decision made pursuant to any such legislation, such action by the CBRM is not in any manner affected or limited by reason of the CBRM entering into this Agreement.

**Governing Law**

12.9 This Agreement will be exclusively governed, construed and enforced in accordance with the laws of the Province of Nova Scotia and the Owner agrees to attorn to the jurisdiction of the Province of Nova Scotia.

**Waiver and Consent**

12.10 No consent or waiver, express or implied, by either party to or of any breach or Default by either party of any or all of its obligations under this Agreement or any amendment of this Agreement will:

- (a) be valid unless it is in writing and stated to be a consent or waiver pursuant to this Agreement;
- (b) be relied upon as a consent or waiver to or of any other breach or Default of the same or any other obligation;
- (c) constitute a general waiver under this Agreement, or
- (d) eliminate or modify the need for a specific consent or waiver pursuant to this section in any other instance.

**Headings**

12.11 The division of this Agreement into articles, sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. The articles, section, subsection and schedule headings in this Agreement are not intended to be full or precise descriptions of the text to which they refer and should not be considered part of this Agreement.

**Extended Meanings**

12.12 Words expressed in the singular include the plural and vice-versa and words in one gender include all genders.

**Severability**

12.13 If any provision of this Agreement is invalid, illegal or unenforceable, it shall not affect the validity, legality or enforceability of any other provision of this Agreement.

**Further Assurances**

12.14 The parties agree that they shall each execute, deliver or cause to be made, done, executed and delivered all such further acts, deeds, assurances and things as may be required or as the other party may reasonably request in order to give full effect to this Agreement.

**Force Majeure**

12.15 If either party is prevented or delayed from performing any of the obligations on its part to be performed hereunder by reason of an Act of God, strike, labour dispute, lockout, threat of imminent strike, fire, flood, interruption or delay in transportation, war, acts of terrorism, insurrection or mob violence, requirement or regulation of government, or statute, unavoidable casualties, shortage of labour, equipment or material, plant breakdown or failure of operation, equipment or any disabling cause (other than lack of funds), without regard to the foregoing enumeration, beyond the control of the parties which cannot be overcome by the means normally employed in performance, then and in every such event, any such prevention or delay shall not be deemed a breach of this Agreement but performance of any of the said obligations or requirements shall be suspended during such period or disability and the period of all such delays resulting from any such causes shall be excluded in computing the time within which anything required or permitted by either party to be done is to be done hereunder, it being understood and agreed that the time within which anything is done, or made pursuant thereto shall be extended by the total period of all such delays.



**Successors and Assigns**

12.16 The terms and provisions of this Agreement shall ensure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized representatives effective this \_\_\_\_\_ day of, \_\_\_\_\_ 20\_\_\_\_

CAPE BRETON REGIONAL MUNICIPALITY

\_\_\_\_\_  
Name:

Title: Chief Administrative Officer

Authorized pursuant to Section 71C and  
Section 71D of *Municipal Government Act*.  
1998, c. 18, s. 1.)

\_\_\_\_\_  
Name:

Title:

I have authority to bind the corporation.

**SCHEDULE "A"**  
**EXAMPLE OF DEVELOPMENT REBATE CALCULATION**  
**(note: this example is for a ten year phase in period)**

**A. Pre-Development Base Year Taxable Assessed Value:**

(1)

| Base Year | Base Year Taxable |
|-----------|-------------------|
| 2007      | \$150,000         |

**B. Post-Development Actual Taxable Assessed Value:**

(2)

(3)

| Year | Rebate Year | Actual Taxable Assessed Value | Current Commercial Municipal Tax |
|------|-------------|-------------------------------|----------------------------------|
| 1    | 2008        | \$350,000                     | 3.78                             |
| 2    | 2009        | \$350,000                     | 3.98                             |
| 3    | 2010        | \$375,000                     | 4.21                             |
| 4    | 2011        | \$375,000                     | 4.52                             |
| 5    | 2012        | \$325,000                     | 4.52                             |
| 6    | 2013        | \$325,000                     | 4.52                             |
| 7    | 2014        | \$325,000                     | 4.51                             |
| 8    | 2015        | \$325,000                     | 4.45                             |
| 9    | 2016        | \$300,000                     | 4.39                             |
| 10   | 2017        | \$300,000                     | 4.31                             |

**C. Development Rebates:**

(4)

(5)=(2-1)

(6)=(5x3)

(7)=(6x4)

(8)

| Years                   | Rebate % | Rebate Eligible Assessment | Rebate Eligible Taxes | Rebate Amount \$ | Cumulative % Payable |
|-------------------------|----------|----------------------------|-----------------------|------------------|----------------------|
| 1                       | 90       | \$200,000                  | \$7,560.00            | \$6,804.00       | 90                   |
| 2                       | 80       | \$200,000                  | \$7,960.00            | \$6,368.00       | 85                   |
| 3                       | 70       | \$225,000                  | \$9,472.50            | \$6,630.75       | 80                   |
| 4                       | 60       | \$225,000                  | \$10,170.00           | \$6,102.00       | 75                   |
| 5                       | 50       | \$175,000                  | \$7,910.00            | \$3,955.00       | 70*                  |
| 6                       | 50       | \$175,000                  | \$7,910.00            | \$3,955.00       | 67                   |
| 7                       | 40       | \$175,000                  | \$7,892.50            | \$3,157.00       | 63                   |
| 8                       | 30       | \$175,000                  | \$7,787.50            | \$2,336.25       | 59                   |
| 9                       | 20       | \$150,000                  | \$6,585.00            | \$1,317.00       | 54*                  |
| 10                      | 10       | \$150,000                  | \$6,465.00            | \$ 646.50        | 50*                  |
| Totals (9) & (10):      |          | \$79,712.50                | \$41,271.50           |                  |                      |
| Re-calculate:           |          | 50%                        | \$1,415.25            |                  |                      |
| Total Allowable Rebate: |          | \$39,856.20                | \$39,856.25           |                  |                      |

\* Reset calculated in Year Five (5) and Year Nine (9) to identify any over/underpayment of Rebate. Total Allowable Development Rebates over the program period cannot exceed 50%.

**SCHEDULE “B”**  
**CDD By-law (By-law No. C-300)**

**SCHEDULE "C"**  
**DEVELOPMENT SUPPORT PROGRAM**

**SCHEDULE "D"**  
**LIST OF DEVELOPMENT PLANS & DRAWINGS**

**SCHEDULE "E"**  
**DEVELOPMENT REBATE CALCULATION**  
**(note: this example is for a ten year phase in period)**

Address:

Property Identification No.:

**A. Pre-Development Base Year Taxable Assessed Value:**

(1)

| Base Year | Base Year Taxable |
|-----------|-------------------|
|           |                   |

**B. Post-Development Actual Taxable Assessed Value:**

(2)

(3)

| Year | Rebate Year | Actual Taxable Assessed Value | Current Commercial Municipal Tax |
|------|-------------|-------------------------------|----------------------------------|
| 1    |             |                               |                                  |
| 2    |             |                               |                                  |
| 3    |             |                               |                                  |
| 4    |             |                               |                                  |
| 5    |             |                               |                                  |
| 6    |             |                               |                                  |
| 7    |             |                               |                                  |
| 8    |             |                               |                                  |
| 9    |             |                               |                                  |
| 10   |             |                               |                                  |

**C. Development Rebates:**

(4)

(5)=(2-1)

(6)=(5x3)

(7)=(6x4)

(8)

| Years                   | Rebate % | Rebate Eligible Assessment | Rebate Eligible Taxes | Rebate Amount \$ | Cumulative % Payable |
|-------------------------|----------|----------------------------|-----------------------|------------------|----------------------|
| 1                       | 90       |                            |                       |                  | 90                   |
| 2                       | 80       |                            |                       |                  | 85                   |
| 3                       | 70       |                            |                       |                  | 80                   |
| 4                       | 60       |                            |                       |                  | 75                   |
| 5                       | 50       |                            |                       |                  | 70*                  |
| 6                       | 50       |                            |                       |                  | 67                   |
| 7                       | 40       |                            |                       |                  | 63                   |
| 8                       | 30       |                            |                       |                  | 59                   |
| 9                       | 20       |                            |                       |                  | 54*                  |
| 10                      | 10       |                            |                       |                  | 50*                  |
| Totals (9) & (10):      |          |                            |                       |                  |                      |
| Re-calculate:           |          | 50%                        |                       |                  |                      |
| Total Allowable Rebate: |          |                            |                       |                  |                      |

\* Reset calculated in Year Five (5) and Year Nine (9) to identify any over/underpayment of Rebate. Total Allowable Development Rebates over the program period cannot exceed 50%.