

**TO:** Mayor Savage and Members of Halifax Regional Council

Original Signed by Director

**SUBMITTED BY:**

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Jerry Blackwood, Acting Director of Finance and Asset Management /CFO

Original Signed by



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Jacques Dubé, Chief Administrative Officer

**DATE:** July 30, 2018

**SUBJECT:** **Administrative Order 50 Disposal of Surplus Real Property PID 00481259**  
**80 Sandy Cove Road, Terence Bay**

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## **ORIGIN**

October 6, 2015 – Regional Council declared 80 Sandy Cove Road, Terence Bay, as surplus to municipal operational requirements and approved disposal through the Community Interest category of Administrative Order 50.

July 16, 2018 – Deadline for the submission of proposals.

## **LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter* (“HRM Charter”), 2008, S.N.S c.39

**Section 63 (1)** The Municipality may sell or lease property at a price less than market value to a non-profit organization that Council considers to be carrying on an activity that is beneficial to the Municipality.

**(2)** A resolution to sell or lease property referred to in subsection (1) at less than market value shall be passed by a two-thirds majority of the Council present and voting.

**(3)** Where the Council proposes to sell property referred to in subsection (1) valued at more than ten thousand dollars at less than market value, the Council shall first hold a public hearing respecting the sale

**(4)** The Council shall advertise the public hearing at least twice, in a newspaper circulating in the Municipality, the first notice to appear at least fourteen days before the hearing.

**(5)** Notice of the public hearing shall include the date, time and place of the hearing, the location of the real property or description of the tangible personal property, the estimated value of the property and the purpose of the sale. 2008, c.39, s.63.

*Administrative Order 50 Disposal of Surplus Real Property*

### **Subsection 2(2)(b) Community Interest**

Properties known to have potential for community use, in particular where:

- (i) there has been a prior community or institutional use of the property; or
- (ii) by location or scarcity of available property the consideration would reasonably arise.

Subsection 4(1)(l):

In the event Council rejects any or all non-profit organizations' submissions to purchase at less than market value, Council may direct staff to proceed to sell the property at market value.

### **RECOMMENDATION**

It is recommended that Halifax Regional Council:

1. Schedule a public hearing to consider the sale of 80 Sandy Cove Road, Terence Bay, to the Terence Bay Community Hall Association ("the Association") for the proposed less than market value price of \$1.00 as per the proposed terms and conditions set out in Table 1 in the Discussion section of this report and a Buy-Back Agreement included as Attachment 1 of this report; and
2. Subject to the outcome of the public hearing, approve the sale and authorize the Mayor and Municipal Clerk to enter into an Agreement of Purchase and Sale with the Terence Bay Community Hall Associations per the terms and conditions set out in Table 1 of this report and execute a deed to the Terence Bay Community Hall Association pursuant thereto.

### **BACKGROUND**

**Municipal Policy:** Administrative Order 50 is a standardized process for the sale or lease of surplus real property according to the intent of the sale.

Sub-clause 2(2)(b) defines Community Interest properties as known to have potential for community use, in particular where:

- (i) there has been a prior community or institutional use of the property; or
- (ii) by location or scarcity of available property the consideration would reasonably arise.

Sub-clause 4(1)(l) states:

In the event Council rejects any or all non-profit organizations' submissions to purchase at less than market value, Council may direct staff to proceed to sell the property at market value.

In 2014, the subject property was declared surplus by Regional Council and assigned to the Community Interest category of Administrative Order 50. Due to issues with title for a portion of the land the Call for Submissions process was delayed pending filing by HRM with the Nova Scotia Land Registry. The Call for Submissions was issued on January 20, 2018. As of the application deadline of July 17, 2018, one (1) proposal was received. The offer of purchase is from the Terence Bay Community Hall Association.

**Property Description:** The subject property has a total land area of 61,707 square feet identified as Lot A and Lot B. The site is improved with a wood frame, single-story three-bay fire station with an overall size of 1,830 square feet. The former fire station has three offices, a mechanical and electrical room. The community hall annexed to the fire station is 2,880 square feet comprising a large open area, two washrooms, kitchen, bar, and hall closet. The site is serviced with a well and septic holding tank. The site is partly paved for parking with an area of undeveloped land that appears to be low lying and susceptible to surface water retention. The site has road access to both Sandy Cove Road and Back Lane. The surrounding development is primarily detached single family dwellings with very limited commercial or institutional uses. The subject property has partial views of Terence Bay but no deeded shoreline access.

**Zoning:** The property is zoned P-2 Community facility zone which permits educational, denominational, and institutional uses; day care facility; medical or veterinary facilities; government offices; public library, museum or gallery; seniors housing and residential care facilities; recreational uses; community centres and halls; and open space uses (cemetery, park, playground, historic site or monument, or marine-related

navigational aids).

**Property Valuation and Assessment:** In 2017, HRM retained Alderney Real Estate Appraisals Limited to provide an appraisal of the subject property. The appraised value is included in a confidential companion In Camera report to Regional Council dated July 30, 2018. The 2017 assessed value was \$255,000 and cited in the Call for Submissions. In 2018, the assessed value is unchanged.

**History of Property Ownership and Use:** The District 4 Volunteer Fire Department Terence Bay formed in 1956 and constructed a fire station on land donated to the former County of Halifax by a local resident. In 1985, the group incorporated as a registered society but merged with the Hatchet Lake Volunteer Fire Department in 1991 to form the Prospect Road & District Volunteer Fire Department. At amalgamation title ceded to the HRM and operations were coordinated under HRM Fire & Emergency Services.

In 2013, Station #53 was de-commissioned but the former Ladies Auxiliary volunteers continued to operate the premises under a newly formed non-profit society, the Terence Bay Community Hall Association. However, no lease or license agreement was executed. The Municipality has paid a substantial portion of annual operating costs through the annual operating budget of Municipal Facilities Maintenance and Operations, Department of Corporate and Customer Services. Due to the absence of a lease or license the property has not been assessed as taxable.

Title to the property was migrated under the *Land Registration Act* on September 27, 2017. The cost of the title search and migration of title has been assumed by HRM and is not being recovered in any closing costs paid by the Purchaser.

## **DISCUSSION**

**Proponent Profile:** The Terence Bay Community Hall Association (the "Association") was incorporated as a non-profit society in 2013 by members of the Ladies Auxiliary upon closure of Fire Station #53. In May 2018, the Association revised its By-laws and elected a new Board of Directors at its Annual General Meeting. The Association's purpose is to "maintain, operate and support an accessible community space that serves the needs of Terence Bay, Lower Prospect and neighboring communities, while promoting volunteerism and local culture" (Submission, p.6).

**Proponent's Intended Use:** The Association proposes continued use of the premises for room rentals, meetings, community celebrations and fundraising events with the possible leasing of one or two offices, kayak storage, and expanded leisure and recreational programming.

**Proponent's Terms and Conditions of Offer:** The proponent's offer includes a purchase price of \$1.00. The desired closing date is December 3, 2018. A Buy-Back Agreement that gives HRM the right of first refusal to repurchase the property for ten percent (10%) of the assessed property value at the time of sale is proposed. The submission omitted reference to payment of all or some portion of HRM's closing costs and "...taxes to be negotiated as necessary".

In addition to the donation of the subject property for \$1.00, the Association requests a financial contribution of \$125,000 for "facility repairs", notably gravel grading asphalt repairs to portions of the parking lot, septic system upgrade, and kitchen/bar retrofits (fridges and kitchen sinks)<sup>1</sup>.

**Proponent's Proposed Capital Plan:** The submission did not include an itemized five (5) year capital plan supported by quotes or estimates but a narrative description included the following:

- (i) Immediate Upgrades:
  - septic system upgrade
  - driveway/parking lot upgrades to gravel and asphalt surfaces
  - installation of commercial fridges and kitchen sinks in bar and kitchen.

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<sup>1</sup> Submission p.12.

- (ii) Over next five years:
- interior décor (painting, curtains etc);
  - interior/exterior door replacement with accessibility upgrades;
  - window replacements;
  - heat pump purchase and installation; and
  - roof replacement.

The Association have indicated they intent to pursue grants from provincial and federal government programs and have confirmed a commitment of \$25,000 from the *District Capital Fund* (District 11) to support immediate capital upgrades.

**Proposed Operating Plan:** The three (3) year financial information provided indicates that the Association generated an average of \$7,000 per annum from “socials”, canteen sales, rentals/donations. The five (5) year projected operating plan is based on increasing these revenues to approximately \$100,000 based largely on bingo, bar/canteen sales, and hosting an annual major event. Start-up operations will be aided by an annual grant from the Prospect Road Recreation Association area rate and a donation from Chebucto Wind Field Inc.<sup>2</sup>.

Although the probability of realizing a 93% increase in revenue within a year cannot be verified by the staff review, the transition to independent operation of the property would be aided by an area rate grant, local business support, and the extent to which local residents have indicated a willingness to offer help as volunteers. Notwithstanding this strong expression of community engagement, area rate funding could fluctuate annually according to demand in relation to capacity and competing funding priorities<sup>3</sup> that would have to be offset by a reduction in expenses and/or increased earned revenues. Further, the Municipality's area rate policy is under review and as such on-going area rate funding cannot be guaranteed. Finally, the Association's proposal indicates the possibility of leasing office space. This revenue option is constrained by current zoning that does not permit for-profit uses and as such a re-zoning may be required.

### **Administrative Order 50 – Community Interest Category**

Consideration under the Community Interest category is a two-step process to determine the feasibility of a proponent's proposal. The first step requires a technical evaluation by a staff team followed by overall consideration by Regional Council using different criteria.

#### **Staff Evaluation Results**

An inter-disciplinary team of staff was convened to evaluate submissions. Led by Finance, the team included Finance & Asset Management (Grants & Contributions/Financial Policy & Planning/Real Estate), Planning & Development, Parks & Recreation. Additional technical information was provided to the team by Planning & Development in relation to development approval requirements. In accordance with sub-clause 4(1)(f) of Administrative Order 50, staff evaluates submissions on four (4) criteria:

- Content compliance
- Viability
- Compensation
- Benefit to the Municipality

#### **Key Findings:**

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<sup>2</sup> Chebucto Wind Field Inc. is a Community Economic Development Investment Fund (CEDIF) in 2001. A CEDIF is a provincial government program to encourage investment in local business by offering tax credits to investors. The corporation has a wind energy project located in Terence Bay.

<sup>3</sup> For details on this area rate see: Recommendation report to Regional Council meeting of June 19, 2018, Area Rate Review, dated February 12, 2018.

1. **Content Compliance** – Except for the omission of closing costs, the application met the requirements as set out in Section 4(1)(e) of Administrative Order 50.
2. **Viability** – Although the Association has occupied and operated the premises for five (5) years, the extent to which the Association can generate additional revenues to cover core operating expenses is unconfirmed. However, an initial operating grant of \$10,000 under the local area rate will provide stability during the start-up phase and a \$25,000 commitment under the *District Capital Fund* may leverage consideration from other sources, including donations, to address immediate repairs or upgrades.

In February 2018, a group of interested residents conducted a survey to assess the community hall's relevance, programming opportunities/needs, and gauge the extent to which people were willing to volunteer in maintaining operations and/or programs. A total of 126 surveys were completed. The results suggest volunteers can be recruited to support a variety of tasks. Respondents suggested the Association initially focus on social and recreational programs. The strong response rate is viewed as encouraging and a critical element in expanding programming as envisaged.

3. **Compensation** – A purchase price of \$1.00 is significantly below the appraised and assessed value of the property.
4. **Benefit to the Municipality** – The Municipality has no operational requirement for the subject property. Continued operation by the Association is considered desirable given the historical development and use of the subject property, continuity in current use of the premises, and the prospect of expanded public access.

In response to a request for clarification, the Association confirmed the following in an email response dated July 22, 2018:

- The Association is willing to pay \$1.00 toward closing costs.
- The Association intends to apply for tax relief and have included \$7,000 as part of “a contingency plan”.

### Summary and Recommendation Rationale

In summary the submission scored 65/100 based on the information provided by the applicant. The intended use is compatible with current zoning but if the Association wish to expand into leasing to individuals or private enterprise a re-zoning application would be required. Further, private, for-profit and government tenancy is excluded from eligibility for discretionary municipal tax relief and as such the Association would be responsible for the payment of such tax, as applicable.

The proposed use provides continuity for existing users while planning is undertaken to broaden the facility's appeal/functionality and generate revenues. The review noted the exceptional response to the Association's survey which, if fulfilled, could signal a regeneration of the community hall and enhanced amenities over the mid-term.

### Buy-Back Agreement

In 2014, Regional Council approved a policy with respect to the use of Buy-Back Agreements in property sales to non-profit organizations<sup>4</sup>. The policy states that a Buy-Back Agreement shall have an initial term of 25 years followed by an automatic review by regional Council to consider continuation, amendment or

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<sup>4</sup> Report to Regional Council dated June 23, 2014, entitled “Use of Buy-Back Agreements in Property Sales to Non-Profit Organizations” approved on July 22, 2014.

release. The Buy-Back Agreement usually forms a first option on the property in favour of the Municipality and is in priority to any financial encumbrances granted by the Purchaser after the sale closes. During the term of the Buy-Back Agreement, the owner may apply to the Municipality for postponement of the Buy-Back Agreement to secure financing up to 65% of the property's market value as of the date of the request. The purpose of the Buy-Back Agreement is to benefit the Municipality by providing an option to repurchase it if the purchaser under a less than market value sale wishes to sell the property or ceases its non-profit operations etc..

It is recommended that the sale of PID 00481259 located at 80 Sandy Cove Road, Terence Bay, include a 25-year Buy-Back Agreement. However, a repurchase price "for ten percent (10%) of the assessed property value at the time of sale" as proposed by the Association would not recognize any capital improvements made by the Association. In the alternative, it is recommended that the Association's investment in the building would be recognized by using the appraised market value of the property at the time of sale, less the land value and any municipal investment (i.e. HRM cash grants or in-kind donations). The key terms to be included in the draft Buy-Back Agreement are set out in Attachment 1 of this report.

### **Proposed Terms and Conditions of Conveyance**

#### *Capital Funding Request*

It is not recommended that the Municipality fund \$125,000 upgrades as there is no lease or license agreement in effect and HRM has, by default, financed core operations and facility maintenance for the last five (5) years. In 2017, these costs totaled \$53,462 and included the following:

- snow removal;
- parking lot grading;
- electricity;
- minor building repairs;
- safety system inspections;
- water testing; and
- septic system inspection, tank emptying and minor upgrade.

As stated in the formal Call for Submissions, the subject property is to be sold "as is" and current property-related expenditures discontinued as of the closing date of the property sale (Call for Submissions, p. 14). Further, the Association was notified in writing that a request for improvements to the firehall "before it is turned over to the community"<sup>5</sup> in 2013 were not supported and that the only commitment was to continue with snow and ice removal pending disposal<sup>6</sup>. HRM has fulfilled its commitment with respect to maintaining snow and ice control.

In response to a request for further information, the Association was advised that HRM had undertaken an independent assessment of both the septic and water systems which confirmed both were operational. HRM did however replace the septic system cover and install barriers to ensure easier access for pumping out and to prevent parking above the septic holding tank. The septic system may be under-sized in relation to the frequency or a concentration of use and as such a future upgrade might consider an enlargement or replacement of the current septic system. At HRM's request, the applicant clarified their request for funding an upgrade to the septic system: "The current system serves as a holding tank for both gray and black water; it fills up quickly and will not support the level of activity that will be required to support operational expenditures. It was suggested that the Association either look at replacing the existing holding tank type system with a proper septic field system, or, at the very least, arrange for the installation of a French drain

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<sup>5</sup> December 3, 2013. The list includes septic tank condition, water quality, site flooding or pooling of water, energy assessment, snow removal, asphalt repairs, replacement overhead doors, replacement bar fridges, a plan of survey, any oil contamination, and washroom upgrades.

<sup>6</sup> Letter dated January 23, 2018.

type system to divert gray water appropriately from the holding tank”.

Upon request, the Association has confirmed that their offer to purchase is not conditional upon receiving \$125,000 in cash. Rather, the request is “...a compassionate ask of the municipality to address issues that had not been seen to under its ownership despite requests made by the previous board. It would also be a recognition of the significant financial contributions that the community made to the construction of the building, including a private donation of land”.

<b>Table 1. Key Terms and Conditions (Proposed)</b>	
<b>Civic Address</b>	80 Sandy Cove Road, Terence Bay
<b>Area</b>	61,707 square feet
<b>Zoning</b>	P-2 Community Facilities Zone
<b>Assessed Value</b>	\$255,000
<b>Appraised Value</b>	See: In Camera Information Report dated July 30, 2018.
<b>Tax Status</b>	Commercial Exempt.
<b>Proposed Purchase Price</b>	\$1.00
<b>Terms of Offer</b>	Property to be sold “as is” and “as zoned”. The Association shall be responsible for all operating and capital costs including annual real property tax.
<b>Proposed Use</b>	Continuation of community hall recreational and leisure activities, and social functions.
<b>Conditions of Sale</b>	Property to be sold “as is” and “as zoned”.
<b>Buy-Back Agreement</b>	A Buy-Back Agreement with an initial term of 25 years shall apply to this conveyance followed by an automatic review by Regional Council. The key terms set out in Attachment 1 of this report shall be included in the Buy-Back Agreement.
<b>Closing Date</b>	Within three (3) months of Regional Council's approval.
<b>Cost of Sale Recoveries</b>	The Purchaser shall pay \$2,500 towards legal migration fees, including the title search eand exludingpayment for an independent appraisal.

Council's Consideration

Upon review of staff’s evaluation, Council must review the submissions based on criteria set out in Section 4(i) of the policy, namely:

- (i) the market value of the property as appraised;
- (ii) the Planning Strategies of the area;
- (iii) the benefit of any cost saving to the Municipality;
- (iv) The consequences, beneficial or otherwise, to the community or to the Municipality as a whole;
- (v) the beneficial considerations of any submission against the benefit to the Municipality of selling the property at market value; and
- (vi) whether or not a Buy-Back is a condition of a sale.

**FINANCIAL IMPLICATIONS**

If approved, the terms of conveyance recommended by the staff review constitutes a less than market value sale because the solicitation of offers has been restricted to only non-profit proponents. Based on the 2018 assessed value of \$255,000, if approved the conveyance of 80 Sandy Cove Road, Terence Bay, to the Terence Bay Community Hall Association for \$1.00 represents an in-kind contribution of \$254,999 by HRM.

Using the 2018 assessed property value of \$255,000 and a sale price of \$1.00 the deed transfer tax lost opportunity cost to HRM would be \$3,825.

Acceptance of \$2,500 towards HRM's closing costs in completing a title search and resolution of the Quit Claim status of a portion of the subject property, deed and legal description, migration to the Nova Scotia *Land Registration Act*, and independent appraisal represents a further in-kind contribution of approximately \$6,000. Conveyance will release HRM from any operating and future re-capitalization costs. HRM's closing costs not recovered by sale proceeds are reimbursed to Real Estate from Capital Reserve Q526.

**Budget Summary: Q526 - Capital Fund Reserve**

Balance in Reserve July 30, 2018	\$ 15,793,115
Projected revenue to March 31, 2019	\$ 5,711,701
Approved withdrawals to March 31, 2019	<u>\$(13,401,935)</u>
Projected net available balance, March 31, 2019	\$ 8,102,881

**Obligation Reserve – Capital Fund Reserve Q526**

The reserve is funded by the sale of land in HRM, other than Business/Industrial Parks or sale of land conveyed to HRM for parks, playgrounds or similar public purposes. Several other large properties are now excluded from deposit to this reserve and are being redirected to the Strategic Capital Reserve Q606. The Capital Reserve Fund is governed by the Halifax Regional Municipality Charter Section 120(1),(3) and (4). Withdrawals from the reserve are for capital expenses for which the Municipality may borrow. The recommendation does not have a negative impact to the reserve balance as this would be a contribution to the reserve.

Conveyance of the subject property will necessitate a review of the property's current classification as Commercial Exempt and the assessed value of the property by Property Valuation Services Corporation.

**RISK CONSIDERATION**

Low. Although the sustainability of operations independent of municipal funding cannot be established the inclusion of a Buy-Back Agreement protects the public interest should the non-profit cease operations or wish to sell or convey the subject property during the next 25 years subject to renewal.

**COMMUNITY ENGAGEMENT**

A mandatory public information meeting was hosted on November 30, 2017, at 80 Sandy Cove Road, Terence Bay. The meeting was publicized in a newspaper advertisement on Saturday, November 18, 2017. The purpose of the meeting was to inform the public of the legislated process to purchase municipal property and specific details about 80 Sandy Cove Road, Terence Bay. Approximately one hundred (100) members of the public attended the meeting. Concerns were raised by the participants with respect to the condition of water and septic systems and upgrades.

**ENVIRONMENTAL IMPLICATIONS**

All Tech Environmental Services Limited conducted a "Phase 1 Environmental Site Assessment" June 27, 2014. The results of this assessment and a Building Condition Report were shared with applicants in the Call for Submissions.

**ALTERNATIVES**

1. Regional Council could direct staff to negotiate a higher purchase price with the Terence Bay Community Hall Association and prepare a Supplementary Recommendation Report for the Council's consideration prior to setting a date for a public hearing.
2. Regional Council could decline the offer of \$1.00 and direct staff to sell the property at market value in accordance with Section 4(1)(i) of Administrative Order 50.



3. Regional Council could propose amended terms and conditions of conveyance as deemed advisable.

If Council selects this option and the amendments are substantive a Supplementary Report may be advisable.

4. Regional Council could waive the Buy-Back Agreement provision to recognize the private donation of land and the local community's 'equity' in terms of the building's construction and site improvements.

### **ATTACHMENTS**

1. Key Terms and Conditions: Buy-Back Agreement
  2. Site Map and Photograph
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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Peta-Jane Temple, Team Lead Grants & Contributions, Finance & Asset Management,  
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**Key Terms and Conditions: Buy-Back Agreement**

The Proposed Buy-Back Agreement shall contain the following key terms and conditions:

The Buy-Back Agreement will constitute a first charge upon the Property. A Notice of Agreement will be registered at the Nova Scotia Land Registry against the title to the Property.

The intended use of the Property shall be defined in accordance and consistent with the Agreement of Purchase and Sale.

An initial term of twenty-five (25) years followed by a review by the Council of the Halifax Regional Municipality to consider continuation, amendment or release.

The Purchaser shall maintain its status as a non-profit society registered with the Nova Scotia Registry of Joint Stock Companies throughout the term of the Agreement.

The Purchaser agrees to notify the Municipality in writing in the event of any mortgage, line of credit or debt instrument, loan guarantee, or other financial instrument or encumbrance secured by the Property, including notification of any default resulting in a lien against title. For example, real property tax arrears, contractor's lien, mortgage principle or interest, claims, actions or demands which may be brought against the Purchaser.

The Purchaser may apply to the Municipality's Chief Administrative Officer for postponement for the purpose of Purchase financing.

The value of loan secured by the Property shall not exceed 65% of the Property's market value as of the date of the request.

The financing agreement shall have a reservation in favour of HRM to have notice of and the option to cover any default.

HRM may invoke the Buy-Back Agreement in the event that the Purchaser:

- (i) ceases the beneficial activity for which the Council of the Halifax Regional Municipality gave its consideration to a less than market value sale of the Property pursuant to subsection 63(1) of the *Halifax Regional Municipality Charter*;
- (ii) discontinues the operations of the Society;
- (iii) is in default of any loan or financial instrument secured by title to the Property;
- (iv) wishes to consider the sale or conveyance of the Property; or
- (v) is in default of the terms and conditions of the Buy-Back Agreement.

The Buy-Back Agreement shall include a formula to determine the method by which the repurchase price shall be determined.

The Purchaser shall indemnify HRM.

The Agreement will be binding on the Society and its successors and assignees.

Site Map and Photograph

