P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 9.3.1i
Halifax Regional Council
February 23, 2016

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed by Director
Bob Bjerke, Chief Planner and Director, Planning and Development

DATE: February 1, 2016

SUBJECT: **Case 18120: MPS and LUB Amendments for 348 Purcell's Cove Road, Halifax**

SUPPLEMENTARY INFORMATION REPORT

ORIGIN

- Application by Sunrose Land Use Consulting
- October 29, 2013 Regional Council initiation of the MPS amendment process
- July 21, 2015 Regional Council deferral of item 11.2.1

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter (HRM Charter), Part VIII, Planning & Development

BACKGROUND

A request has been submitted for site-specific amendments to the Halifax Municipal Planning Strategy (MPS) and Halifax Mainland Land Use By-law (LUB) for properties located at 348 Purcell's Cove Road, Halifax (Maps 1 to 3 of Attachment B). The purpose of this request is to authorize an existing single unit dwelling, an office of a professional person (former dental office) and accessory buildings, which were constructed without permits and with disregard for the LUB and development agreement requirements, to remain in their current locations on the subject properties. This application was submitted in response to a 2008 LUB compliance case which has been dealt with in Provincial Court, resulting in the payment of a fine. However, there continues to be various issues of non-compliance with the LUB and the development agreement.

On July 21, 2015, Regional Council passed the following motion for item 11.2.1:

"MOVED by Councillor Fisher, seconded by Councillor Outhit

THAT Halifax Regional Council defer Case 18120 pending further submission/information from the proponent regarding the application for staff review and comment.

MOTION TO DEFER PUT AND PASSED UNANIMOUSLY."

As a result, the applicant has submitted additional information for Council's consideration (Attachment A). This includes information from Sunrose Land Use Consulting and Strum Consulting which is in addition to the written submission included as Attachment G to the original staff report dated June 9, 2015.

The additional information from Sunrose Land Use Consulting is in relation to the following matters:

- Background to the HRM compliance case;
- Site constraints for building purposes (refers to Strum report);
- The Jensens' past reliance on their architect as representative;
- Approvals from other agencies;
- Quality of construction and property maintenance; and
- Other factors/ proposed solutions

The additional information from Strum Consulting is in relation to the following matters:

- Site details including the location of steep slopes and a bedrock outcrop; and
- Site constraints relating to the construction of a dwelling in the "*Proposed Area for Main Building"* shown on Sketch No. 1 of the original staff report from 1982 (Attachment E of staff report dated June 9, 2015).

DISCUSSION

Staff have reviewed the additional information provided by the applicant (see Attachment A) and advise that there are no additional staff comments or clarifications required at this time. As noted in the June 9, 2015 staff report, there are no site characteristics or unique circumstances that have been identified by the applicant that would warrant amending the MPS and LUB. The site history identifies a disregard for municipal requirements, including the failure to apply for permits and comply with the development agreement, which should not be supported by amendments to the MPS and LUB.

Therefore, the staff recommendation, as provided in the June 9, 2015 staff report, remains unchanged.

FINANCIAL IMPLICATIONS

The HRM costs associated with processing this planning application can be accommodated within the approved 2015/2016 operating budget for C310 Planning & Applications.

COMMUNITY ENGAGEMENT

The community engagement process undertaken for this application is consistent with the intent of the HRM Community Engagement Strategy. The level of community engagement was consultation, achieved through a Public Information Meeting held on January 13, 2014. Notices of the meeting were posted on the HRM website, in the newspaper, and mailed to property owners within the notification area. The minutes from the meeting are found in Attachment H of the staff report dated June 9, 2015.

Prior to considering the approval of any MPS amendments, Regional Council must hold a public hearing. Should Regional Council decide to proceed with a public hearing on this application, in addition to the published newspaper advertisements, individual property owners within the notification area will be advised of the public hearing by regular mail. The HRM website will also be updated to indicate notice of the public hearing.

The proposed MPS and LUB amendments will potentially impact local property owners.

ENVIRONMENTAL IMPLICATIONS

The proposed amendments as contained in Attachments A and B of the staff report dated June 9, 2015 are inconsistent with the applicable environmental policies of the MPS related to building setbacks and land uses along the shoreline of the Northwest Arm. However, the proposed amendments recognize only the existing buildings and land uses of the properties and do not allow for additional buildings or uses.

ATTACHMENTS

Attachment A Additional Information from Applicant

A copy of this report can be obtained online at http://www.halifax.ca/commcoun/index.php then choose the appropriate Community Council and meeting date, or by contacting the Office of the Municipal Clerk at 902-490-4210, or Fax 902-490-4208.

Report Prepared by: Paul Sampson, LPP, Planner, 902-490-6259

Report Approved by: Original Signed
Kelly Denty, Manager Development Approvals, 902-490-4800

Sunrose LAND USE CONSULTING

September 25, 2015

Paul Sampson, Planner
Halifax Regional Municipality
Western Region Office – Bayers Road
7071 Bayers Road, Suite 2005
Halifax, Nova Scotia
B3L 2C2

Dear Paul:

RE: Additional Information regarding Case 18120: MPS/LUB amendments for 348 Purcell's Cove Road, Halifax (PIDs 00270975, 41158452)

In response to the motion of Regional Council on July 21, 2015, this letter is to submit additional information regarding the above noted application, which was submitted with the intent to resolve and clarify land use issues on the Jensen property.

For the past three years since this application was submitted, the Jensens have worked towards achieving a good planning solution with HRM. They regret that they were not more attentive and involved in the municipal process as they developed their property over the past 30 years. They realize that their home and property has caused difficulties for HRM in terms of compliance and finding a resolution to the situation.

Background

Stemming from a complaint by a competing orthodontist, HRM filed charges against the Jensens in 2010 in terms of the buildings and land uses on their residential property. The outcome of the judicial process was that six of the seven charges were dropped. The Jensens pleaded guilty to one charge, paid a substantial fine and took action to remedy the situation by submitting the current MPS amendment application to Regional Council. Neither HRM nor the Court made any attempt to have the Jensens vacate or tear down their home. No further action was taken or is pending to our knowledge.

Site Constraints

The staff report states that the Jensen property is similar to the properties in the area and that the Jensens did not provide any information that would support their choice to renovate their boathouse into a home rather than build a new home on the larger property. The Jensens have hired Strum Consulting to address these points (see attached report). The Strum report identifies the many site constraints of the property and outlines the difficulties for constructing a home on the larger property.

TEL: 902.478.2541
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EMAIL: SUNROSE@EASTLINK.CA
615 WESTPOINT DRIVE
LUCASVILLE, NOVA SCOTIA
B4B 1X8

Architect Representative

As noted above, the Jensens take responsibility for any past errors or lack of diligence on their part. They are, however, somewhat constrained in responding by the fact that they relied on their professional architect to represent them during the development agreement process 30 years ago and to carry out the necessary permit applications. The individual responsible is now deceased, leaving them without the ability to respond completely and put the present concerns in better context.

Other Agencies

With regard to the current application, the staff report states that, "...the applicant has not provided any approvals from other government departments or agencies, with the exception of HPA." This implies that the Jensens were not cooperating on this point. In fact, three other government agencies were contacted, and they all said that they do not review or regulate development that has been in place as long as the Jensens' has been (over 30 years). Further, the Jensens provided supporting data on the structural condition of their buildings and the maintenance records of their septic system. They also confirmed that 30 years ago they had received approvals from the Department of Environment, Navigational Aids, and The Coast Guard to allow the construction of the wharf.

Quality Construction/Property

The Jensens have been upstanding citizens of Halifax for many years. They have maintained their residential property with outstanding quality over the decades. They have paid taxes on all the properties, including the water lot, since 1974 (over 40 years). Their home has been written up in the East Coast Living magazine on more than one occasion and is considered to be one of the most attractive homes on the Northwest Arm with its small scale and nautical theme. The Jensens built and maintained an extremely high quality fence and walkway for HRM across their property without being required to do so. The extension of the walkway to the north and south of their property is not fenced or maintained by HRM. In fact,
portions of the walkway has fallen away into the Northwest Arm due to erosion and is dangerous. The Jensens have supported local causes by hosting charity events in their home and have provided invaluable service to the yacht squadron and Saraguay Club when docking spaces are lacking, and in particular during the relief effort after Hurricane Juan

Balancing / Other Factors

The Jensen's property does not present any risk to neighbours, harbor traffic or Purcell's Cove Road. Some of the present deficiencies are minor in nature. Some are only violations because the property is severed by a public walkway and deemed to be two properties rather than one. The Jensens have been unable to secure financing for their home due to the uncertain status of their property. It is also extremely unlikely they will be able to sell their home without clarity around the zoning and permitted uses on the property. From a practical standpoint, ordering the demolition of the Jensen home and relocation of the

accessory buildings would be more disruptive to the neighourhood than allowing them to remain. As the Jensens enter retirement age, they hope to have the peace of mind that their home of over 30 years is safe from demolition and in good legal standing.

Proposed Solution / Moving Forward

In our submission, the best solution at this stage is for Regional Council to consider approving the proposed amendments outlined in the staff report. Regional Council voted to initiate the process two years ago on October 29, 2013. That decision was well-founded and generally well received through the public information process in that no one objected to finding a solution for the Jensen's property. In keeping with that approach, the proposed amendments present a good planning solution that would allow all parties concerned to turn the page and move forward.

If Regional Council wants something more from the Jensens, Regional Council could approve the amendments with the exception of allowing the part-time dental office in the accessory building.

I sincerely thank Regional Council for allowing me to provide this additional information before making a decision that has such serious implications.

On behalf of the Jensens, I respectfully request that Regional Council give First Reading to the proposed MPS amendments and move this application forward to public hearing.

Sincerely:

Original Signed

Jenifer Tsang, MCIP

Enclosures:
Letter from Strum Engineering dated September 15, 2015

October 1, 2015

Ms. Jenifer Tsang
Sunrose Land Use Consulting
615 Westpoint Drive
Lucasville, NS B4B 1X8

Dear Ms. Tsang,

Re: Property Development Review
348 Purcell's Cove Road

Introduction

Strum Consulting was engaged by Sunrose Land Use Consulting to review property development related issues for PID's 00270975 and 41158452, otherwise known as Civic 348, Purcell's Cove Road. Strum staff visited the site on July 23, 2015, and subsequently on August 6, 2015 to complete limited topographical survey. Strum has prepared a Site Plan for this lot, which is attached to this letter.

Site Description

The lot in question is separated into two PID's by a Halifax Regional Municipality (HRM) walkway parcel. The combined area of the lot (both PID's) is 0.6 Ha (1.5 acres). The lot is generally narrower near the street and widens out as it approaches the Northwest Arm. A Water Lot is also associated with this lot, and is described as PID 00633511. Near Purcell's Cove Road, the lot is approximately 23 m (75') wide, widening to approximately 65 m (215') at the Northwest Arm. The total lot depth is approximately 160 m (525'). The lot slopes significantly from Purcell's Cove Road to the Northwest Arm, with the total elevation change being approximately 25 m (85'). The steepest portion of the lot exists generally from the point where the lot widens to the Northwest Arm. The Site Plan attached to this letter indicates key features of the site, as well as several elevation points across the site. Key features include a well, a sewage disposal field, a rock outcrop, two garages, a two-storey shed, and a dwelling. Also shown on the attached Site Plan is the *Proposed Area for Main Building* indicated in the 1982 development agreement for this Lot.

The lot as currently developed is quite constrained and the property owner has indicated that snow-clearing of the driveways and general maintenance is very difficult due to the steep topography and constrained usable lot area.

Existing buildings on the site are summarized as follows:

- Upper Garage – used for maintenance and vehicle storage, located near the narrow section of the lot, relatively high on the lot.
- Lower Garage – used for maintenance and vehicle storage, located at the bottom of a large embankment, near the existing dwelling.
- Two-Storey Shed – used for storage, located at the bottom of a large embankment, near the dwelling.
- Dwelling – primary dwelling on this property, located near the Northwest Arm, on the water-side of the HRM walkway.

Proposed House Location from Development Agreement

Shown on the attached Site Plan is a transposition of the *Proposed Area Main Building Location* from the 1982 development agreement. Strum has been asked by Sunrose Land Use Consulting to comment on the suitability of this location for constructing the main dwelling. Based on our review of the site as it exists today, the following issues have been identified as constraints that would have made this location difficult to construct within. Inset A on the attached Site Plan shows a greater level of detail for this area.

a. Steep Slopes – The proposed area for the main building is located in an area with some significant and steep slopes. This area includes a rock outcrop, with slopes dropping nearly 10 m (33') from one edge of the building area to the other. The slope continues to drop outside the building area by another 5 m (16'), making the total slope elevation change 15 m (over 50'). The average slope of this area is over 50% (drops approximate 1' vertically for every 2' horizontally), with some sections being nearly vertical. Constructing a building on the sloped portion of this proposed building area would have proven to be quite challenging, likely requiring non-conventional and expensive construction techniques. The flat portion of the proposed building area is quite small, and likely not big enough for a reasonable size dwelling if any landscaped graded areas were planned immediately around the building.

b. Bedrock Outcrop – As noted elsewhere above in this letter, a large bedrock outcrop exists within the proposed building area.

   Based on review of existing geological mapping, the bedrock on the property is the Bluestone Formation, part of the Halifax Group metasedimentary unit. The Bluestone Formation is described as a grey, thinly bedded metasiltstone and slate. This is a hard or strong rock but the orientation of bedding, evident in the exposed bedrock surface, would result in planes of weakness.

   As indicated, this bedrock outcrop is a significant feature, located in the middle of the site. The bedding of the bedrock dips steeply down, away from the steep sloping face on the downward slope of the exposed rock outcrop. The orientation of the bedding, and the moderately close spacing of these discontinuities, would result in planes of weakness that would need to be addressed by engineering and construction measures in development of the site (attached Photo 1).

In addition to the bedding, fractures and joints are evident in the inspection of the outcrop surface resulting in a blocky structure further compromising the strength of the rock (Photo 2). This is supported by the owner's report of periodic rock falls that block the driveway from time to time. The necessity and uncertainty involved in addressing the in-situ rock outcrop could have led the designer to shift the location of site structures away from this area.

A retaining wall was constructed in an attempt to prevent rock falls from the outcrop blocking the driveway. The contractor who constructed the wall, Jim Seaboyer, was contacted to review its construction. The wall is constructed of Rockwood retaining wall blocks manufactured by South Shore Ready Mix and is 1.8 m (6') to 2.4 m (8') high over much of its length (Photo 3). Mr. Seaboyer indicated that at points the wall was extended into the outcrop for support, bearing on the bedrock. As an indication of the weak structure of the bedrock, Mr. Seaboyer said after the wall was constructed he was using a jack hammer to cut some steps in the upslope face of the outcrop. Due to the vibration, sections of the bedrock settled causing damage to parts of the retaining wall that had to be repaired.

Removal of the bedrock outcrop for site development would have been an expensive option, given the strength of the intact rock. Under current environmental regulations, this cost could be further increased since the rock is potentially acid generating.

Given the height and steepness of the bedrock outcrop it is understandable that the site development was moved to the more level area at the base of the slope.

c. Location of Well, Septic System, and Wet Areas – While it is difficult to ascertain suitable well and septic locations on this property today, the owner of the property has indicated that the well and septic systems were generally located in the only feasible locations at the time of construction. The septic system is located on the same lot as the current dwelling. A wet, low-lying area southwest of the upper garage on both sides of the driveway would have further restricted the placement of both the septic system, and the house. The homeowner has noted that this low-lying area receives significant overland drainage from the southwest, and remains wet throughout most of the year. Drainage from this wet area travels along the east edge of this property, and eventually discharges to the northwest arm where there is evidence of significant flows.

Summary

Based on our review of this property as it exists today, Strum Consulting has identified several issues which would have made the construction of a dwelling in the *Proposed Area for Main Building* indicated in the 1982 development agreement for this Lot difficult. These include:

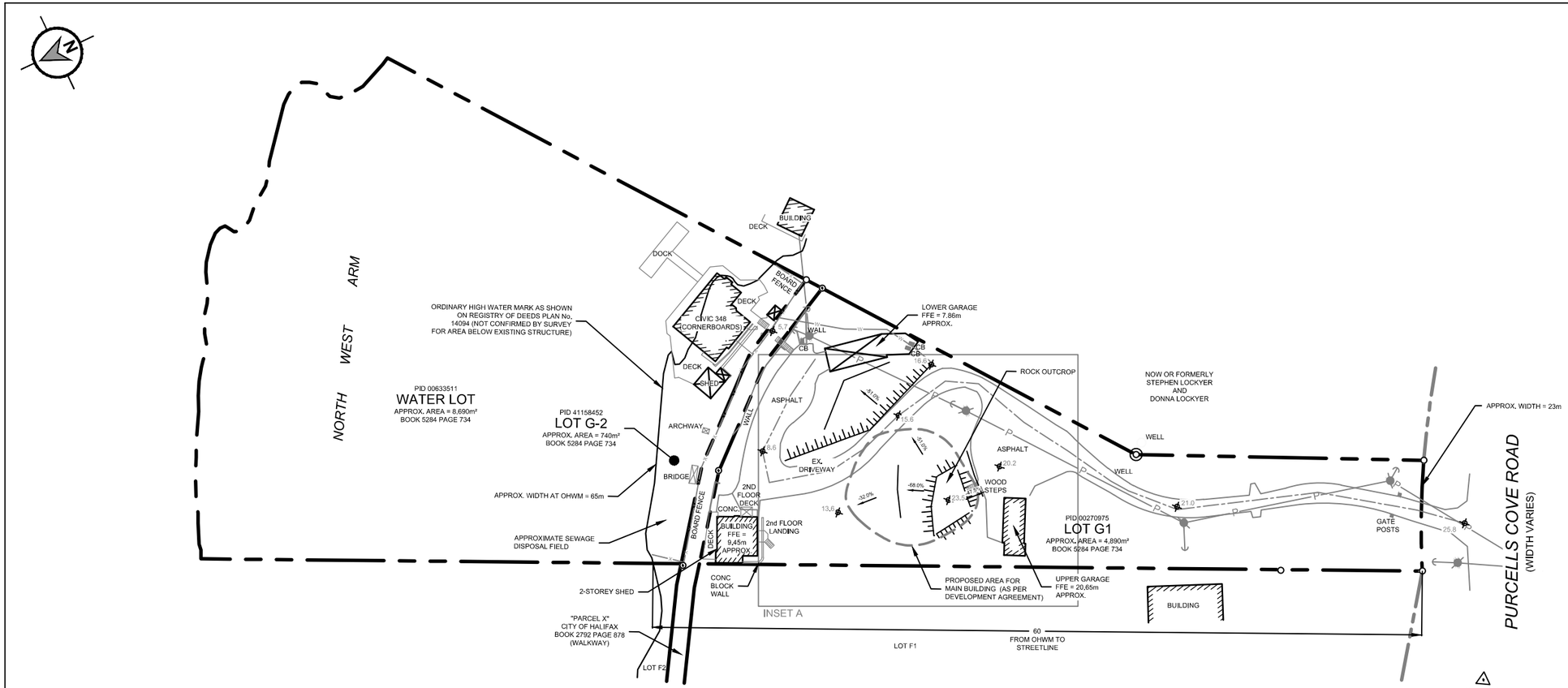
- Very steep slopes across virtually the entire proposed building envelope.
- A bedrock outcrop constituting much of the proposed building envelope of questionable stability for construction upon.
- Constraints related to locations for well, septic systems, and wet areas.

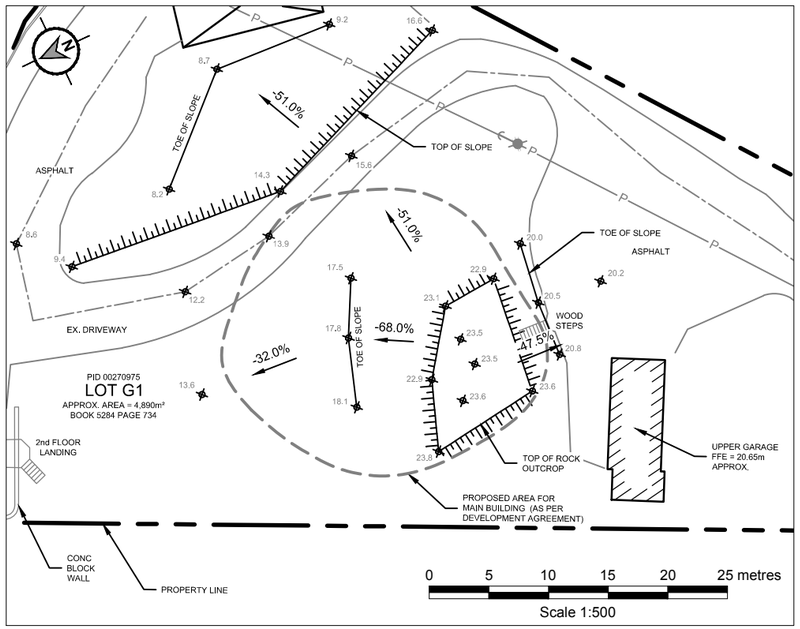
While not impossible to construct a dwelling within the area shown, the construction would have required unusual and expensive construction methods, and it is very likely that other portions of this lot were better suited for house construction.

Thank you,

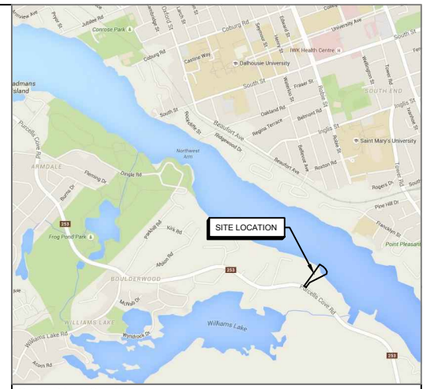
Original Signed

Chris Boudreau, P.Eng.
Manager Civil Engineering
cboudreau@strum.com





INSET A
SCALE: 1:500



GENERAL NOTES:

1. SURVEY COMPLETED BY STRUM CONSULTING IN AUGUST 2014. ALL ELEVATIONS ARE IN METERS AND ARE GEODETICALLY REFERENCED TO NOVA SCOTIA CONTROL MONUMENT NSCM200195, PROVISIONAL ELEV. 28.44m.

CLIENT:

SUNROSE LAND USE CONSULTING

PROJECT:

JENSEN PROPERTY INVESTIGATION

LOCATION:

348 PURCELLS COVE ROAD
HALIFAX, NS

TITLE:

SITE PLAN

CONSULTANT:

Strum 20 YEARS Taking Charge CONSULTING

Engineering * Surveying * Environmental
Bedford * Antigonish * Moncton * Deer Lake

SCALE: H: AS NOTED	V:	
DATE: 2015-10-01		DRAWN: RW
DESIGNED: N/A	CHECKED: CB	APPR'D: CB

PROJECT No.: 15-5430

DRAWING No.: **C-101**

S:\Strum Project Files\2015 Files\15-5430\Drawings\CAD Drawings\15-5430 SLC metric.dwg

Photo 1: Bedding in downslope face of bedrock outcrop.

Photo 2: Blocky structure of rock in outcrop.

Photo 3: Retaining wall around bedrock outcrop.