

**CITY OF PORTLAND  
TEMPORARY REVOCABLE LICENSE AGREEMENT  
WITH SCOTT PETERSON**

**THIS LICENSE AGREEMENT** ("License") is made as of this 14<sup>th</sup> day of October, 2016, by and between the **CITY OF PORTLAND**, a body politic and corporate located in the County of Cumberland, State of Maine (hereinafter referred to as the "City"), and **SCOTT PETERSON**, whose mailing address is 144 North Shore Road, Gray, Maine 04039 (hereinafter referred to as "Peterson") and is granted for the purpose of entering a portion of the property owned by the City shown as Bay Avenue on the "Plan of a part of Diamond Island" recorded in the City of Portland Clerk's Record of Streets on December 20, 2869 at page 125 (the "Property"), and conducting replanting work pursuant to an Agreement Regarding Land Use between the parties. Such work shall be governed by the terms of this License.

1. Peterson, or his designee under his direction and supervision, is hereby permitted to enter the Property to conduct the replanting work (the "Work") agreed upon by the parties pursuant to an Agreement Regarding Land Use, which is attached hereto as Exhibit I (the "Land Use Agreement"), including the Remedial Plan, which is attached thereto as Exhibit A.
2. The restatement in this document of any term of the Land Use Agreement shall not be deemed to waive any term not so restated. If any disagreement is found between the Land Use Agreement and this document, then this document shall govern; provided, however, that this document and its attachments shall be construed to be supplemental to one another to the extent possible.
3. In conducting the Work under this License, Peterson shall take all necessary steps to avoid damaging any aspect of the Property. Nothing in this paragraph is intended to limit Peterson obligations under the remaining provisions of this License.
4. Peterson agrees that he shall restore, repair, and replace all aspects of the Property that are disturbed or damaged as a result of Peterson presence or work on the Property or the presence or work of its employees, contractors, subcontractors, invitees or volunteers. Any and all such repair, replacement, and restoration work shall be performed to the City's satisfaction and at the sole expense of Peterson. Peterson will notify City when he has substantially completed the Work and City shall conduct its final inspection of the Work within 30 days thereafter, noting any deficiencies therein. Upon completion, City shall issue its written verification of the successful completion of the Work. Peterson acknowledges and agrees that such inspection shall not be deemed to impose any duty or liability upon the City to supervise any aspect of or approve the quality of the Work. This License shall terminate upon successful completion of the Work.
5. Peterson agrees to comply with all applicable laws and regulations in his operations hereunder, including but not limited to all applicable federal, state and local environmental laws and regulations, including without limitation all laws

and regulations governing hazardous substances. Peterson further understands and agrees that he must obtain at his own cost any permits and licenses required for its operations under this License, but City represents that it has no knowledge of any additional City permits or licenses required to perform the contemplated Work beyond this License.

6. Insurance: Peterson will obtain and maintain, at all times during the term of this License, public liability insurance and automobile insurance in an amount of at least Four Hundred Thousand Dollars (\$400,000.00) per occurrence, protecting Peterson and the City from any and all claims for personal or bodily injury, death, and property damage and covering the obligation of indemnification hereunder. The City shall be named as an additional insured thereon. All insurance policies hereunder shall be primary to any insurance, or self-insurance, maintained by the City. Policies and certificates evidencing such policies satisfactory to the City shall be delivered to the City upon Peterson's execution of this License. The City shall be provided with no less than thirty (30) days prior notice of cancellation or non-renewal. Peterson shall require any contractors and subcontractors performing work for Peterson under the terms of this License to obtain the insurance coverages set forth herein.
7. Indemnification: Peterson will indemnify, defend, and hold harmless the City from any and all losses, claims, expenses, actions, causes of action, costs, damages and obligations caused by the negligent acts or omissions and/or any violation of any applicable laws or regulations by Peterson, his employees, contractors, invitees or volunteers concerning the Property, excepting to the extent such losses, claims, expenses, actions, causes of action, or the violation of applicable law or regulation is caused by the City, its officers, employees or agents. Peterson's obligations under this paragraph shall survive the termination of this License.
8. Termination: This License shall terminate upon successful completion of the Work, certified by the City. This License is revocable at will by either party for its convenience upon no less than one (1) day prior written notice from the revoking party to the other party. Notwithstanding such an early termination, Peterson's obligations under paragraphs 4 and 5 of this License shall remain in full force and effect, provided Peterson continues to have access to the Property to complete the Work.
9. License: This instrument is a License and no provision hereof shall be construed as conveying an easement or other estate in land. The City reserves all other rights not inconsistent or incompatible with the rights granted herein to Peterson. Peterson acquires no other rights in and to the Property, except as set forth herein.
10. All Work and restoration conducted under this License shall be accomplished by Peterson at his sole cost and expense in such a manner as will not unreasonably interfere with the City's use of the Property.

11. No Assignment: This License is non-transferable and shall not be assigned, pledged, sublet or otherwise transferred to another party without the prior written approval of the City.
12. Amendment: This License shall be amended only in writing executed by the parties.
13. This License may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a pdf or electronic document shall be considered the equivalent of an original signature.

[THE REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE FOLLOWS.]

The parties have hereunto executed this License through their duly authorized representatives as of the day and date first above written.

**CITY OF PORTLAND, MAINE**

**APPROVED AS TO FORM:**

MTT  
CORPORATION COUNSEL'S OFFICE

J. P. Jennings  
By: Jon Jennings  
Its: City Manager

**SCOTT PETERSON**

Scott Peterson

STATE OF MAINE  
County of Cumberland

October 17, 2016

Personally appeared before me the above-named Jon Jennings, City Manager for the City of Portland, and acknowledged the foregoing instrument is his free act and deed in said capacity, and the free act and deed of the said City of Portland.

Sonia T. Bean  
Notary Public/Attorney-At-Law

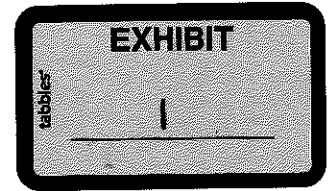
**SONIA T. BEAN**  
Notary Public, Maine  
My Commission Expires January 10, 2017

STATE OF MAINE  
County of Cumberland

October 14, 2016

Personally appeared before me the above-named Scott Peterson and acknowledged the foregoing instrument is his free act and deed.

Ronald N. Ward  
Notary Public/Attorney-At-Law  
Ronald N. Ward



***AGREEMENT REGARDING LAND USE***

Property Owners: James Luedke and Katherine Luedke  
Contractor: Scott Peterson  
Location of Property: 0 Crescent Avenue, Great Diamond Island  
Assessor's Reference: Chart 83, Block G, Lot 6

This Agreement is made this first day of August, 2016, by and between the City of Portland (hereinafter "City"); James and Katherine Luedke (the "Owners"), who have a mailing address of 136 Lassen Drive, San Bruno, California 94066; and Scott Peterson (the "Contractor"), who has a mailing address of 144 North Shore Road, Gray, Maine 04039.

**RECITALS**

WHEREAS, Owners are the current holders of title to certain real property located at 0 Crescent Avenue on Great Diamond Island in the City of Portland, which is more particularly described in a deed from the Barbara L. Raimondi Trust dated July 23, 2015 and recorded in the Cumberland County Registry of Deeds, Book 32513, Page 32 (the "Premises");

WHEREAS, the City is the owner of certain real property a portion of which abuts the Premises, and which is shown as Bay Avenue on the "Plan of a part of Diamond Island" recorded in the City of Portland Clerk's Record of Streets on December 20, 1869 at page 125 (the "City Property");

WHEREAS, the City Property and the Premises are located in the City's Shoreland Zone and are subject to certain limitations regarding development and clearing;

WHEREAS, the Premises have heretofore been comprised of vacant, undeveloped land and Owners now wish to develop the Premises by constructing a single-family residence;

WHEREAS, on March 18, 2016, Owners submitted a site plan application to the City seeking approval of said single family residence (the "Application") and as part of that Application submitted a plan depicting trees that would be removed from the Premises as part of the development of the single-family residence (the "Tree Clearing Plan");

WHEREAS, Owners claim to have hired Contractor to conduct clearing consistent with the terms of the Tree Clearing Plan, which Contractor claims to have been unaware of until the project was underway;

WHEREAS, on or around May 5, 2016, Contractor cleared trees and other vegetation at the Premises in accordance with the Tree Clearing Plan but prior to issuance of approval of the Application (the "Premises Violation"), which Contractor claims to have been unaware of;

WHEREAS, on or around May 5, 2016, Contractor undertook additional clearing on the City Property without approval from the City and in violation of restrictions applicable to properties in the Shoreland Zone (the "City Property Violations");

WHEREAS, Contractor claims to have been unaware that he was clearing on City Property;

WHEREAS, by letter dated June 22, 2016, the City issued a notice of violation to the Owners for the Premises Violation and the City Property Violation (the "Owners NOV");

WHEREAS, by letter dated June 22, 2016, the City issued a notice of violation to the Contractor for the Premises Violation and the City Property Violation (the "Contractor NOV");

WHEREAS, Owners and Contractor acknowledge that clearing of vegetation in the Shoreland Zone without a permit is prohibited and subject to fines under Section 1-15 of the City of Portland Code of Ordinances;

WHEREAS, Owners and Contractor acknowledge that clearing trees from City Property without permission is a violation of 14 M.R.S. § 7552(2);

WHEREAS, Owners assert that they did not direct the clearing that occurred on the City Property, which Contractor disagrees with;

WHEREAS, Owners and Contractor deny any liability for the City Property Violations;

WHEREAS, Owners and Contractor have agreed to take certain remedial measures aimed at restoring the Premises to a condition that will best protect the shoreland and abate any violation of the City's Code;

WHEREAS, the City wishes to facilitate the restoration of the shoreland and the Premises as quickly as possible in order to avoid erosion and other damage; and

WHEREAS, under the circumstances recited above, the parties desire to resolve this matter without the need for enforcement action under M.R. Civ. P. 80K.

NOW, THEREFORE, in consideration of their mutual promises, covenants and agreements, and other good and valuable consideration, receipt of which is hereby acknowledged, the said parties agree, as follows:

1. The Owners and Contractor are jointly and severally liable to the City of Portland for a civil penalty in the amount of \$500, which shall be due within ten days of the execution of this Agreement.

2. Owners and/or Contractor shall implement the approved restoration plan, attached as Exhibit A (the "Remedial Plan"), no later than October 15, 2016, or 30 days after the

City issues all necessary approvals for implementation of the Remedial Plan, including any required permits and a license or other approval authorizing access to the City Property for purposes of implementing the Remedial Plan, whichever occurs later.

3. Subject to Owners' and/or Contractor's payment of the penalty outlined in Paragraph 1, above, and satisfactory completion of the remedial measures outlined in Paragraph 2, above, the City of Portland hereby grants a release of the causes of action against Owners and Contractor for the violations described in this Agreement and set forth in the Owners NOV and the Contractor NOV (the "Released Violations"), and covenants not to seek additional civil remedies or damages as a result of such violations. The City's causes of action for the Released Violations are not released if the terms of this Agreement are not satisfied. The Released Violations will be counted as previous violations for purposes of calculating penalties and other remedies if Owners and/or Contractor engage in future violations.

4. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties have set forth their hands and seals and agree to be bound by the terms of this Agreement

**CITY OF PORTLAND**

Date:

\_\_\_\_\_  
By: Danielle West-Chuhta, Esq.  
Its: Corporation Counsel

Date:

\_\_\_\_\_  
By: Ann Machado  
Its: Zoning Administrator


**JAMES LUEDKE**

Date: 8-8-2016

\_\_\_\_\_  


**KATHERINE LUEDKE**

Date: 9/8/16

\_\_\_\_\_  


**SCOTT PETERSON**

Date:

\_\_\_\_\_

City issues all necessary approvals for implementation of the Remedial Plan, including any required permits and a license or other approval authorizing access to the City Property for purposes of implementing the Remedial Plan, whichever occurs later.

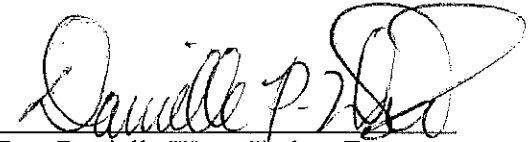
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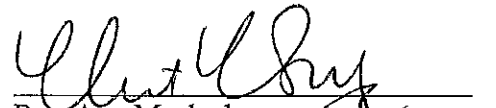
IN WITNESS WHEREOF, the parties have set forth their hands and seals and agree to be bound by the terms of this Agreement


**CITY OF PORTLAND**

Date: August 15, 2016

  
By: Danielle West-Chuhta, Esq.  
Its: Corporation Counsel

Date: August 18, 2016

  
By: Ann Machado  
Its: Zoning Administrator

  
Christina Stacey  
Specialist

**JAMES LUEDKE**

Date: \_\_\_\_\_

**KATHERINE LUEDKE**

Date: \_\_\_\_\_

**SCOTT PETERSON**

Date: 8/9/16







M O H R & S E R E D I N  
Landscape Architects, Inc.

**MEMORANDUM**

July 14, 2016

To: Mr. Jeff Tarling, City of Portland Arborist  
Ms. Christina Stacey

C: Ms. Juliet Browne, Esquire  
Ms. Barbara Barhite

From: Stephen B. Mohr, Mohr & Seredin Landscape Architects, Inc.

**Re: Additional Plants for the Luedke Landscape Remediation Plan**

Dear Jeff and Christina,

In response to the email I received yesterday from you, where in you requested that the remediation plan planting for the right-of-way be increased by and additional 50-100 native shrub plantings, I offer the responses below for your review. These plantings will be in addition to the plant list set forth in the previously submitted remediation plan.

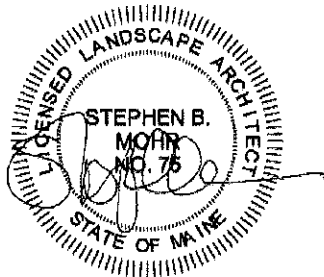
1. As discussed with Jeff Tarling earlier this week, there has been substantial regeneration of the understory growth within the previously disturbed area. Most of the vegetation that has re-emerged are invasive species and are dispersed throughout the cleared opening. The replanting effort with the proposed shrubs and groundcover ferns will have to occur within the openings between the re-emerging vegetation. As noted by Christina in her email, we cannot specifically identify the locations for the plantings and we will direct the landscape contractor to place the plants in the areas between the emerging new growth.
2. We are proposing to use Bayberry, Black Chokeberry, and Huckleberry for shrubs, and to use Hayscented Fern as a ground cover. We have verified availability for all of these plant materials from a local nursery and the attached plant list reflects the sizes available and quantities noted on the plant list. A total of 58 shrubs and 40 Hayscented Fern are proposed to be distributed through the disturbed area.
3. These additional plantings will be placed in small groupings of 2 to 5 shrubs and accompanied with 5 to 8 of the Hayscented Ferns. These plantings will conform to the guidelines and recommendations set forth in the previously submitted recommendation plan.

I trust this will address the request for additional planting.

Respectfully submitted,



Stephen B. Mohr, ASLA  
Maine Licensed Landscape Architect  
Mohr & Seredin Landscape Architects, Inc.





## LANDSCAPE TREATMENT PLAN

### **Right of Way Adjacent to the Luedke Residence** Crescent Avenue, Great Diamond Island, Maine June 28, 2016

#### Background -

On June 23, 2016, I accompanied staff from the City of Portland (Jeff Tarling, Arborist, and Phil Dipierro, Development Coordinator) and Ms. Juliet Browne, Esquire (owner's counsel) to review and assess the landscape disturbance which occurred earlier in the month on land adjacent to the parcel owned by James Luedke on Crescent Avenue. The area of disturbance is  $\pm$  11,800 square feet, and is within a dedicated but not accepted right of way (aka paper street) which runs parallel to the shoreline of Great Diamond Island. This area is within the 75 foot setback from the top of the adjacent bank, which is identified on the City's Shoreland Zoning Map as a Coastal Bluff. The top of the bank is 15 to 20 feet away from, and approximately 12 feet higher than the identified normal high water line of Casco Bay.

The prior intrusion into the right of way included the removal of six (6) to seven (7) overstory trees (as reported by Ms. Chris Stacey, City of Portland Zoning Specialist), removal of understory vegetation (primarily invasive species), and disturbance of the soil. The disturbed area has had hay applied at an acceptable coverage rate, and there is visual evidence that the understory growth is returning. Much of what was observed for regeneration on the 23rd was invasive species including Japanese Barberry, Oriental Bittersweet, Multiflora Rose, and Honeysuckle. The group examined the remaining stumps and concluded that the tree removal count was somewhere between six (6) and nine (9) live trees, the largest of which was a Red Pine.

Of particular note was the disposal of the cut vegetation and ground litter, which was pushed or dumped over the embankment. Approximately 130 to 140 feet of the bank is covered with wood debris, leaf duff/litter, and soil. There is evidence of bank settlement ( $\pm$  6") at the top of the bluff near the north end of the right of way. When examined from the bottom of the bank, there is clear evidence of erosion and undercutting of the bank. Based on our knowledge of the area, we believe this is caused in part by groundwater migration from the upland, but is also a result of wave action during times of very high water.

#### Observations -

Much of the area within the right of way has a reasonably well distributed stand of trees, with the notable exception of the opening in the north end of the right of way. There is a well distributed, healthy overstory of Red Oak, Norway Maple, Poplar, and Birch. The approximate locations of the existing trees are shown on the attached existing conditions plan and can be seen in the photographs. At the south end of the right of way, and on the bank, much of the understory trees and shrub growth has been preserved. Speckled Alder, Black Cherry, Serviceberry, High-bush Blueberry, Bayberry and Spicebush were observed within the right of way, mostly in close proximity to the bank.

The areas near the top of the bank showed evidence of settlement and a shared concern of those present was the potential for soil settlement and loss of bank integrity if mechanical equipment is used within twenty (20) feet, horizontally, of the top of the bank. There is also concern that the efforts to remove the debris on the bank could result in soil disturbance and lead to soil movement or loss of the embankment integrity.

The balance of the disturbed ground surface within the right of way shows no evidence of erosion, or potential for creating issues with stormwater runoff from the uphill parcel. While there is evidence of groundcover revegetation on fifteen percent (15%) to twenty percent (20%) of the disturbed surfaces, the group noted that establishing a stabilizing groundcover in the right of way would be beneficial.

Recommendations for Mitigation and Restoration -

Mohr & Seredin recommends that the disturbed area be restored as soon as is practicable through planting, seeding, and limited, careful removal of the larger debris and soil/duff at the top of the embankment. There are several key issues that the contractor performing the work must adhere to in the work plan:

1. All work activities within 25 feet of the top of the bank shall be hand work with no mechanical or motorized equipment in that area.
2. Erosion control measures must be in place for all of the proposed planting and surface restoration activities prior to those tasks being performed.
3. All planting must be performed in compliance with the Maine Nurserymens Association standards for planting and seeding.

The specific recommendations for the restoration are as follows:

A. Bank Debris:

1. By manual labor remove the loose, non-interlocking logs and large diameter limbs (those over 4" in size at the butts) on the top of the debris piles on the bank. If the material does not freely move, it must be left in place.
2. The four to five mounds of leaf duff, litter, and soil at the top of the debris area shall be carefully raked out with metal rakes to smooth the areas. This will help to avoid long-term settlement and allow these areas to be seeded.

B. Disturbed Ground Surface Between the Top of the Bank and the Lot Line:

1. In the areas where there is no evidence of groundcover revegetation the hay and soil surface shall be lightly scarified (no more than 1" depth) with a metal rake and the area seeded with the mix noted in the plant list.
2. In areas where there is groundcover revegetation occurring, the seed shall be broadcast over the hay, then raked with a leaf rake.
3. No fertilizer, lime or other soil amendments shall be applied.
4. The seed rate of 1.5 lbs. of the native seed mix shall be followed. After 45 days, any areas not showing 80% catch shall be reseeded.

C. Planting:

A planting plan and plant list have been prepared to accompany this written report. The plan graphically shows the general locations for the native plantings included in the plant list. In the southern portion of the right of way, just a few trees are proposed in the small opening in the overstory canopy, and a limited number of shrubs are shown to be installed near the top of the bank.

The majority of the proposed plantings are shown within the northern half of the right of way where there is a larger break in the overstory canopy. Our recommendation is that a representative from Mohr & Seredin be present to layout the plants prior to installation.

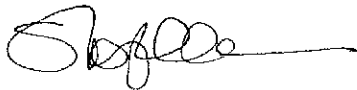
The proposed plant list includes eight (8) overstory deciduous trees of mixed sizes; seven (7) understory shrubs/small trees and forty -even (47) shrubs. The plants are all native except for the Renaissance Reflection Birch which was selected for disease and insect resistance. The seed mix is also a native mix selected for this setting in close proximity to the shore.

The owner will need to provide on-going watering and care for the plantings for at least two (2) growing seasons to assure that the plants survive.

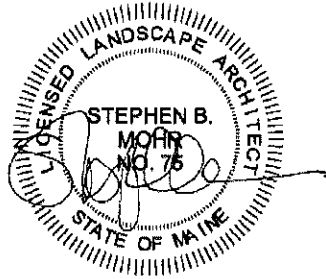
D. Conclusion:

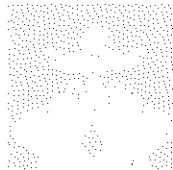
The implementation of this remediation plan will repair the disturbed area, re-establish the lost shrubs and tree vegetation, and restore the area to a natural condition, noting the exception of the invasive species in this area.

Respectfully submitted,



Stephen B. Mohr, ASLA  
Maine Licensed Landscape Architect  
Mohr & Seredin Landscape Architects, Inc.





M O H R & S E R E D I N

Landscape Architects, Inc.

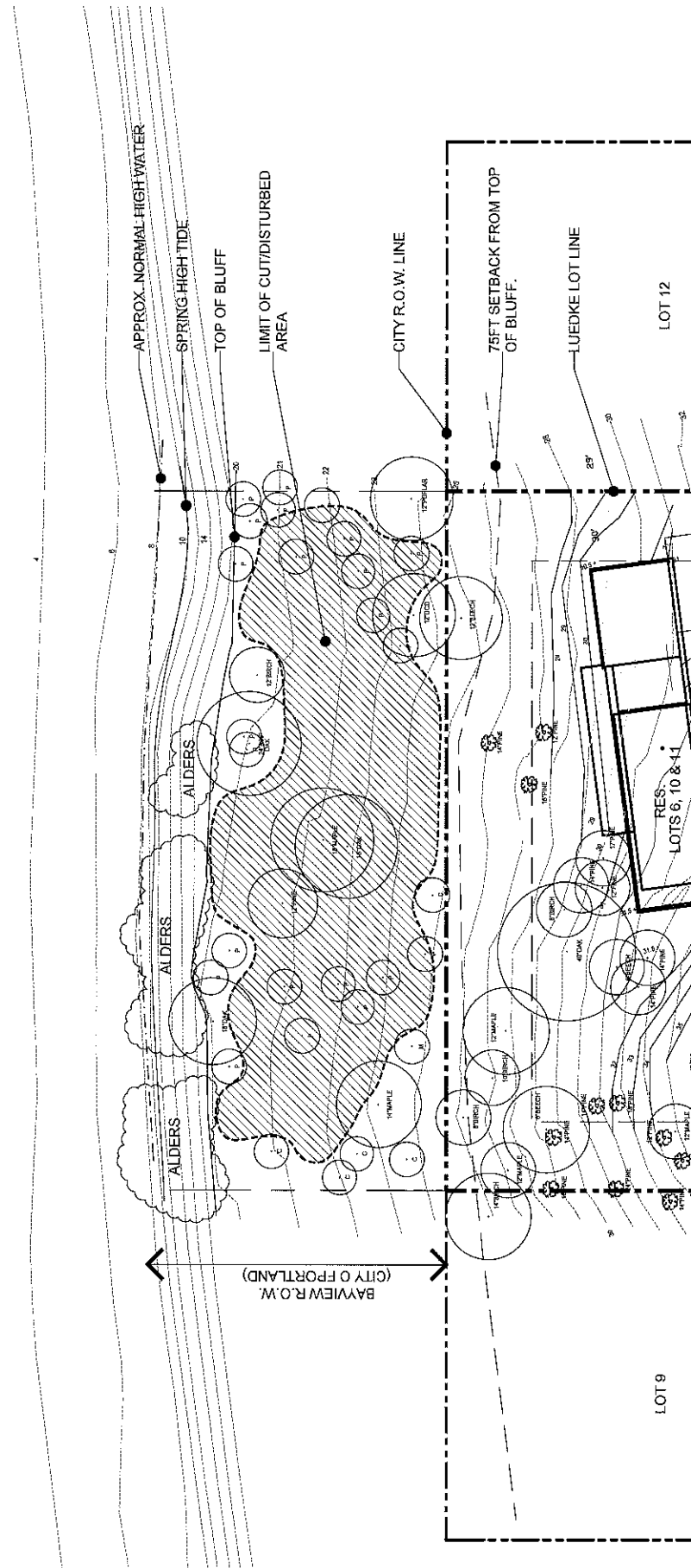
June 28, 2016


**PLANT LIST**

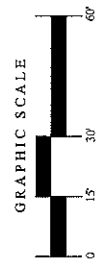
**Re: Luedke Residence Remediation  
Crescent Ave., Great Diamond Island, Maine**

Quantity	Name	Common Name	Size	Note
<b>Trees:</b>				
2	Acer rubrum 'Red Sunset'	Red Maple	2" - 2.5" caliper	B&B
2	Quercus rubra	Red Oak	2" - 2.5" caliper	#25
3	Amelanchier canadensis	Serviceberry	3 - 4 ft. ht.	#5
2	Betula papyrifera 'Renaissance Reflection'	Paper Birch 'Renci'	1.75" - 2" caliper	B&B
2	Betula papyrifera 'Renaissance Reflection'	Paper Birch 'Renci'	5 - 6 ft. ht.	#5
4	Alnus rugosa	Speckled Alder	2' - 2.5' caliper	#15
<b>Shrubs:</b>				
10	Myrica pennsylvanica	Bayberry	18" - 24" caliper	#3
12	Amelanchier stolonifera	Ground Serviceberry	18" - 24" ht.	#5
25	Vaccinium angustifolium	Low-bush Blueberry	3" - 6" ht.	#1
<b>Seed Mix:</b>				
20lbs.	50% Hard fescue, 30% Sheep fescue, and 20% Red fescue		seed @ 1.5 lbs. per 1,000SF	

CASCO BAY



  
Moberg & Sebein  
Landscape Architects, Inc.  
18 Pleasant Street, Portland, Maine 041  
ph: 1.207.871.0003  
fax: 1.207.871.1419

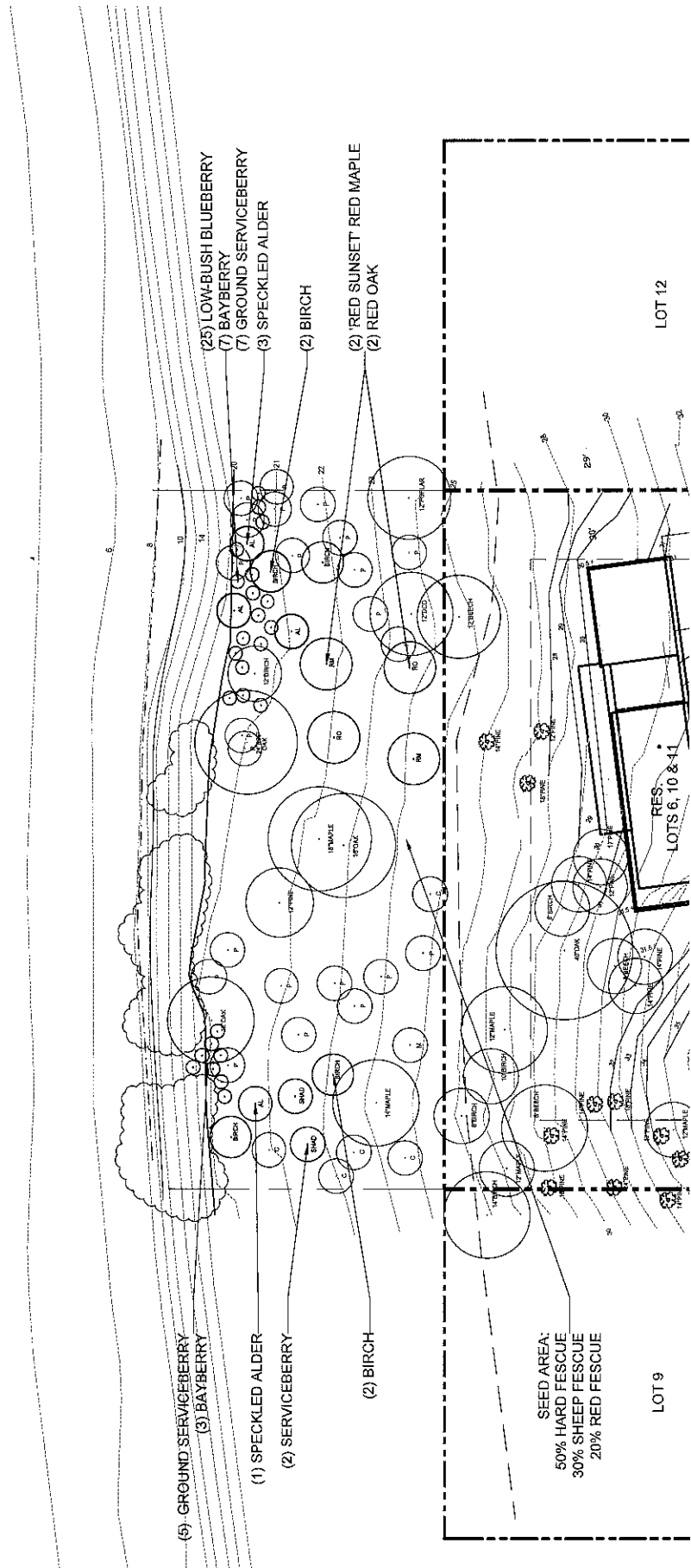


# Luedke Residence - Existing Conditions Plan

Crescent Ave, Great Diamond Island, Maine

June 28, 2016

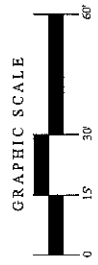
CASCO BAY



Luedke Residence - Remediation Plan

Crescent Ave, Great Diamond Island, Maine

June 28, 2016



**MOHR & SAKREDIN**  
Landscape Architects, Inc.  
18 Pleasant Street, Portland, Maine 04101  
Tel: 1.207.871.1419  
Fax: 1.207.871.1419