

83E-E-46

2008.0177

18 McKinley Ct. - GDI

Inn at Diamond Cove

Inn at Diamond Cove, LLC.

on Spreadsheet



Ronald N. Ward

(207) 772-1941

rnward@dwmlaw.com

(207) 772-3627 Fax

(800) 727-1941

245 Commercial Street  
Post Office Box 9781  
Portland, ME 04104-5081

www.dwmlaw.com

ADMITTED IN ME ONLY

- Daniel Amory\*
- Harry R. Pringle\*
- Richard A. Spencer\*
- Gerald M. Zelint\*
- Ronald N. Ward\*
- David J. Becker\*
- John S. Karpinski\*
- William L. Plouffe\*
- Jerrold A. Crouter\*
- Michael E. High\*
- Richard A. Shingy\*
- Bruce W. Smith\*
- Gary D. Vogel\*
- E. William Stockmeyer\*
- Benjamin E. Marcus\*
- Melissa A. Hewey†
- Eric R. Herian††
- Jeanne M. Kincaid††
- Gregory W. Sample\*
- Daniel J. Rose††
- Kaiglin Smith, Jr.\*
- Davis J. Nathanson\*
- Edward J. Kelleher\*
- S. Campbell Badger†
- Melissa L. Cilley◊
- Amy K. Tchoe††
- David S. Sherman, Jr.\*
- Robert P. Nadeau\*
- Stephen C. Jordan††
- Catherine D. Alexander\*
- Brian D. Willing\*
- John Lisnik, Jr.††
- Aaron M. Pratt††
- James C. Schwedenbach††
- Elizabeth D. McEvoy\*
- Jeffrey T. Pompiano\*
- Peter C. Foley\*
- Jessica M. Eminons\*
- Jonathan M. Goodman\*
- Mike K. Reynolds\*
- Abigail Greene Goldman\*
- Amy J. Visentin\*
- Sara S. Hellstedt\*

April 8, 2008

Richard Knowland  
Senior Planner  
City of Portland  
389 Congress Street  
Portland, ME 04101

RE: Double Barracks and Hospital Buildings --  
Great Diamond Island

Dear Rick:

Enclosed is our application for our zoning text amendment required to go forward with the proposed Project. The development entity is The Inn at Diamond Cove, LLC, a Maine limited liability Company. David and Nathan Bateman are acting as development consultants for the investor group. I am serving as its agent.

The summary of the Project is as follows:

The two buildings in question are substantially deteriorated and a collapse of either would not be unexpected. Except for the level of deterioration, these buildings are similar to the other buildings at Ft. McKinley which have been rehabilitated over the years, beginning in the 1980s. The current request for an amendment refers to the Ft. McKinley conditional rezoning in 1986 which allowed the inner core multi-unit buildings to go forward ("Phase I"). The single family house lots ("Phase II") proceeded on a separate track and have no direct bearing on this application.

The original approvals actually anticipated uses very similar to what is now proposed. However, the development approvals are now decades old and the zoning administrator has noted an inconsistency between our proposed use and the definition of "inn" in our current ordinances. Inns, as currently defined, do not include separate kitchen facilities. This Project proposes individual, residential condominium units, each of which will have its own separate kitchen facilities, together with some limited common amenities. Those amenities include a swimming pool and associated food/beverage service. In order to facilitate the financing and construction of the Project, the developer has agreed to go forward with the enclosed amendment to assure conformity with the City ordinances.

**Consultants**

Roger P. Keley  
Labor Relations &  
Conflict Management

Ann S. Chapman  
Policy & Labor Relations

Christopher P. O'Neil  
Governmental Affairs

Michael J. Opida Ph.D.  
Special Education

**Of Counsel**

Harold E. Woodsum, Jr.\*  
Hugh G. E. MacVahon\*  
Joseph L. DeWitt III\*  
Robert L. Gips\*  
Donald A. Kopp\*

\* Admitted In Maine  
† Admitted In New Hampshire  
◊ Admitted In Missouri

The Diamond Cove Homeowners Association has voted to approve the proposed condominium hotel concept for the Double Barracks. The intentions with respect to the Hospital are yet to be detailed and finally approved by the Association but all of that will proceed assuming the Double Barracks Project is a success.

These properties have, in the past, become a struggle between the Association and the City, primarily on the issue of whether the City should have been paying assessments following the maturing of tax liens. The City earlier sent out RFP packages and received no acceptable offers. The current developer believes that it has received good cooperation from both the Association and the City and is in position to move ahead to commence construction in the summer of 2008. Assuming the zoning issues are cleared and the building permits issued before August 1, 2008, the Project will be on track to restore the Double Barracks to a productive property generating real estate taxes and assessments.

Thanks for your help in expediting all of this.

Sincerely,



Ronald N. Ward

RNW:kjl

Enclosures

cc: Bateman Partners, LLC

Ronald N. Ward

(207) 772-1941

rnward@dwmlaw.com

(207) 772-3627 Fax

(800) 727-1941

245 Commercial Street  
Post Office Box 9781  
Portland, ME 04104-5081

www.dwmlaw.com

ADMITTED IN ME ONLY

Daniel Amory\*  
 Harry B. Pringle\*  
 Richard A. S pencer\*  
 Gerald M. Zolinf  
 Ronald N. Ward\*  
 David J. Backer\*  
 John S. Kaminski\*  
 William L. Floutter\*  
 Jenni A. Crauter\*  
 Michael E. High\*  
 Richard A. Slinney\*  
 Bruce W. Smith\*  
 Gary D. Voigt\*  
 E. William Stockmeyer\*  
 Benjamin E. Marcus\*  
 Melissa A. Hewsey†  
 Eric R. Herian\*†  
 Jeanne M. Kincaid\*†  
 Gregory W. Sample\*  
 Daniel J. Rose\*†  
 Kaighn Smith, Jr.\*  
 Dana J. Nathanson\*  
 Edward J. Kelleher\*  
 S. Campbell Badger\*  
 Melissa L. Cilley\*  
 Amy K. Torano\*†  
 David S. Sherman, Jr.\*  
 Robert P. Nadesu\*  
 Stephen C. Jordan\*†  
 Catherine D. Alexander\*  
 Brandon Willing\*  
 John Lisnik, Jr.\*†  
 Aaron M. Pratt\*†  
 James C. Schwellenbach\*†  
 Elizabeth D. McEvoy\*  
 Jeffrey T. Champagne\*  
 Peter C. Felnly\*  
 Jessica M. Emmmons\*  
 Jonathan M. Goodman\*  
 Mike K. Reynolds\*  
 Abigail Greene Goldman\*  
 Amy J. Visentin\*  
 Sara S. Helstedt\*

## MEMORANDUM

TO: Portland Department of Planning and Development (Knowland)  
 FROM: Ron Ward  
 RE: The Inn at Diamond Cove, LLC – Great Diamond Island  
 DATE: April 8, 2008

The following is a summary response to the email inquiry of April 3, 2008 from Rick Knowland. The information sought is available from a number of different sources, some of which was provided earlier in connection with the contracting with the City for the purchase of the Double Barracks (“Building 46”) and Hospital Building (“Building 19”). The developer’s consultant for this project is Bateman Partners, which can be reached at 772-2992.

1. Sewer Capacity - The sewer for the proposed project will be provided by the existing overboard discharge system. Joseph Laverriere, P.E., Senior Engineer at DeLuca-Hoffman Associates, Inc. is the consulting engineer on this issue and can provide whatever additional detail is required. For your information, attached is a chart which summarizes existing and projected flows as of August, 2007. These projections include the Double Barracks Project and will be updated to include the potential development of the Hospital. For your information, the current sewer capacity issue focuses upon infiltration into the system, rather than expansion of existing uses.

2. Existing Housing Units at Ft. McKinley – Currently 77 residential units in Phase I (originally approved for 134 units) and 39 single family lots in Phase II, with 34 houses on those lots.

3. Transportation – The Inn will provide its own transportation facilities consistent with the “transportation plan and golf cart amendments” for Diamond Cove. The details of that will be agreed to with the Association, in conformance with City ordinances.

4. Diamond Cove Homeowners Association Support – See attached.

5. Map of the Ft. McKinley Complex – See attached.

RNW:kjl  
 Attachments

### Consultants

Roger P. Kelley  
 Labor Relations &  
 Conflict Management

Ann S. Chapman  
 Policy & Labor Relations

Christopher P. O’Neil  
 Governmental Affairs

Michael J. Duda Ph.D.  
 Special Education

### Of Counsel

Harold E. Woodsum, Jr.\*  
 Hugh S. E. MacMahon\*  
 Joseph L. Oetelfield III\*  
 Robert L. Gips\*  
 Donald A. Kooz\*

\* Admitted In Maine  
 † Admitted In New Hampshire  
 ‡ Admitted in Missouri

M E M O R A N D U M

TO: City of Portland Planning Department (Knowland)  
FROM: The Inn At Diamond Cove, LLC  
RE: Site Plan Application at Ft. McKinley  
DATE: April 29, 2008

The following is in response to the various questions posed at the initial Planning Board workshop on April 22<sup>nd</sup>, in no particular order:

1. Sanitary Waste – The Project has confirmation of adequate current capacity in the existing system to handle all of the units proposed in the Double Barracks and Hospital. See enclosed correspondence from the Project's consulting engineers at DeLuca-Hoffman Associates (Laverriere).

2. Transportation – The Project will have its own transportation needs and facilities quite apart from those provided by the Diamond Cove Homeowners Association ("DCHA"). During construction, all contractors will arrive at either the Cove landing or by barge landing on the north end of the island. The construction transportation will be provided by Casco Bay Lines and private water shuttles. Following construction, all of our owners, guests and employees will be directed to the same landing points utilizing the same services and specifically advised not to utilize any off-site facilities, including the public pier at the south end of the Island. Over time, it is possible that the Project and DCHA will collaborate on certain transportation but the Project will not be collaborating on any transportation which exits the Ft. McKinley site.

3. Public Water – From prior, extensive reviews, we confirm more than adequate capacity to service the Project. We have requested a confirmatory letter from the Portland Water District which has been assured to be delivered later this week.

4. Solid Waste – The Project will create new members of DCHA who will pay assessments accordingly. Part of that assessment is for solid waste disposal which is contracted by and entirely controlled by DCHA.

5. Financial and Technical Capability – Enclosed is a financing interest letter from TD Banknorth and a resume from Bateman Partners, LLC, development consultant. David Bateman initiated his involvement with the planning and build-out of the Project in the early 1980s. The list of consultants retained to work on this Project includes DeLuca Hoffman Associates, Archetype (David Lloyd) and Portland Builders.

6. Development Phasing – The Double Barracks construction will go forward immediately, assuming the permits are timely issued. The Hospital is anticipated to go forward in the next building season assuming the Double Barracks phase of the Project has proven successful.

7. Recreation and Open Space – Both the Double Barracks and the Hospital are badly dilapidated, existing structures not located on the areas designated as recreational or open space. The proposed swimming pool and cabana structures are located on what was labeled “Open Space/Recreation” in an exhibit to the City’s conditional rezoning document certified by the City Clerk on January 28, 1986 (“Project Conditions”). Section 1 of the Project Conditions provides that those portions of the Project “identified on the map attached hereto as open space shall be dedicated and reserved as such in perpetuity.” The term “open space” is not a defined term in the document. However, the proposed swimming pool and cabana are not materially different from the existing swimming pool/cabana constructed on the Parade Grounds in the 1980s after the Phase I permits were in hand. The Parade Grounds were also designated open space/recreation. From a legal perspective, we have precedent that the proposed pool/cabana does not violate the terms of the Project Conditions. From a practical standpoint, the existing swimming pool/cabana will not easily handle the additional use which would be generated by the Project. Providing a second facility will help assure the comfortable co-existence between the Project and DCHA, with no material loss of recreational area or open space and with no impacts upon historic vistas. In any event, the Project Conditions are elements of the conditional rezoning dating back to 1985 and it falls exclusively to the City to both interpret its document and decide whether the Project meets the criteria. With respect to the DCHA position, see Section 15 below.

8. Environmentally Sensitive Areas – The original site and subdivision approvals specifically anticipated the redevelopment of the Double Barracks and the Hospital, which were included in the allowable 134 units in the Phase I portion of the Project. In connection with the permitting for both Phase I and Phase II, environmentally sensitive areas were carefully mapped out. Neither the buildings involved in this Project nor the small area dedicated to the swimming pool/cabana were designated “environmentally sensitive areas”.

9. Shoreland Zoning – The Project is located in the interior of Ft. McKinley, several hundred feet from the nearest water bodies and does not fall within a shoreland zone.

10. Environmental Impact Analysis – Years and hundreds of thousands of dollars were invested in environmental impacts for both Phase I and Phase II, stretching from the 1980s into the 1990s. The Project is the rehabilitation of historic buildings which were formerly included in this analysis. The updated details on some of the

specific areas are noted in this memo. We have no information from any source suggesting that this Project needs more analysis other than that provided herein.

11. Emergency Services – The Double Barracks building has been designed with a central alarm and sprinkler system to meet local and state fire codes for the proposed use. See enclosed letter from Archetype dealing with Life Safety issues. The overall plan for emergency services for Ft. McKinley has been created and implemented by DCHA.

12. Mainland Parking – The Project's mainland parking needs will be met by Portland Harbor Hotel, pursuant to its various leasing arrangements with area parking lots, including the ramped parking facility located beneath Portland Harbor Hotel. See enclosed letter from Portland Harbor Hotel relating to mainland parking.

13. Organizational Status - The Inn At Diamond Cove, LLC is a Maine limited liability company with both a Clerk and a Registered Agent, registered with the Maine Secretary of State. The members are Maine Union Realty, LLC (a New York state limited liability company, with David Hart and members of his family as the principal members, together with Charles DesLauriers). Other members may be added. Ronald N. Ward is the Registered Agent.

14. Settlement Agreement with Maine Audubon Society, et al. – See enclosed memo from Ronald N. Ward on this topic.

15. DCHA Support – See enclosed copy of Second Amendment recorded in Book 25425, Page 2 confirming DCHA super majority approval of the Project.



PURCHASE AND SALE AGREEMENT

1. PARTIES. THE CITY OF PORTLAND, MAINE, a Maine municipal corporation ("Seller") agrees to sell and THE INN AT DIAMOND COVE, LLC, a Maine limited liability company with a place of business in said Portland, Maine ("Buyer") agrees to buy, upon the terms and conditions hereafter set forth, the real estate described in paragraph 2 of this Agreement.

2. DESCRIPTION. The premises to which this Agreement applies consist of certain lots or parcels of land customarily known as The Hospital Building ("Building #19") and The Double Barracks ("Building #46") located at Fort McKinley, Great Diamond Island, Portland, Maine, together with all of the appurtenant rights thereto including any rights of way, easements, licenses and permits ("Premises"). The Premises shall also include the limited common areas surrounding the buildings as anticipated by the Diamond Cove Declaration of Covenants and Restrictions. The parcel of land relating to the Double Barracks is generally depicted on the site plan shown as Schedule A, attached hereto and made a part hereof, and is also described in deeds from McKinley Partners Limited Partnership dated May 2, 2001 and recorded in the Cumberland County Registry of Deeds in Book 16290, Pages 254 and 256. The Premises may be further delineated on a survey to be provided by the Buyer.

3. DEED. The Premises are to be conveyed by a quitclaim (release) deed, which deed shall convey good and clear record and marketable title to the Premises, free from all liens, encumbrances and tenancies, except utility easements which do not materially impair the value of the Premises.

4. CONSIDERATION. The consideration for this Agreement, the receipt and sufficiency of which is hereby acknowledged, is as follows:

- a. One Dollar (\$1.00) and other good and valuable consideration;
- b. Buyer shall proceed in good faith to prepare a development plan for the Premises which shall establish commercially viable buildings taxable by the Seller in the ordinary course ("Development Plan");
- c. The Development Plan shall be submitted to the Portland Planning Board for site plan approval which may, at the option of Buyer, be submitted in phases which would reflect the Buyer's intentions to proceed separately with a development of the Double Barracks and the Hospital;
- d. Buyer shall hold Seller harmless from and against any claims for assessments by the Diamond Cove Homeowners Association with respect to that real estate conveyed to the Buyer hereunder; and
- e. Seller shall waive any claims for real estate taxes or assessments accruing through the date when certificates of occupancy have been issued for each approved unit within the Development Plan.

5. TIME FOR PERFORMANCE/DELIVERY OF DEED. Such deed and any other transfer documents shall be delivered on a date and time specified by the Buyer not more than fourteen (14) days after the date of Buyer's notice to Seller at the offices of Buyer's attorneys, Drummond, Woodsum & MacMahon, 245 Commercial Street, P.O. Box 9781, Portland, Maine 04104-5081 (the "Closing"). Buyer shall elect to proceed to closing on the Double Barracks by given written notice to Seller on or before a date that is no later than September 14, 2007 ("Double Barracks Exercise Date") or on the Hospital Building by giving written notice to Seller on or before a date that is no later than September 14, 2008 ("Hospital Exercise Date") provided that Seller and Buyer may consensually extend the Notices of Exercise on either pursuant to written agreement signed by both. If the Buyer fails to elect to exercise its rights to purchase either or both the Double Barracks or the Hospital Buildings for any reason other than a default by the Seller hereunder, neither party shall have any further rights or claims against the other and this Agreement shall terminate without further recourse.

6. BUYER'S CONTINGENCIES. In addition to such other conditions to Closing as may be set forth herein, the obligations of Buyer under this Agreement are subject to the following contingencies which are reserved solely for Buyer's benefit and may be waived by Buyer at any time:

- a. Approval of the Development Plan by the Diamond Cove Homeowners Association;
- b. Reasonable access to the Premises to confirm its condition and qualification for development;
- c. Receipt from the Seller of all engineering reports and physical inspections in the possession of Seller; and
- d. Seller shall be obligated to provide all of the information necessary to support the issuance of standard commercial title insurance covering the Premises in amounts as reasonably determined by Buyer. Such supporting information shall be provided in a timely manner as requested by the Buyer and shall apply to the period commencing upon the date which is the assessment date for the first real estate tax lien recorded against the Premises, and continuing to the date of Closing. Buyer shall be responsible for the standard commercial title insurance premium charges.

Seller and Buyer recognize that development issues may be identified in the contract phase of this Agreement requiring some amendment to the agreements expressed herein. Seller agrees that such modifications may be negotiated by its City Manager without the need for supplemental approval by the City Council.

7. TITLE CONFORMITY; EXTENSIONS; CONDITIONS. If Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or, if at the time of the Closing the Premises do not conform with the terms and conditions hereof, then Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the terms and conditions hereof, as the case may be, in which event the time for performance hereof shall be

extended for a period of thirty (30) days. If at the expiration of such extended time Seller shall have failed to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, then, at Buyer's option, Buyer may either declare the obligations of the parties hereto void and this agreement shall be without recourse by either of the parties hereto, or Buyer may elect to accept such title to the Premises in its then condition as Seller can deliver.

8. RISK OF LOSS. Until delivery of title to the Premises from Seller to Buyer, risk of loss or damage to Premises by fire or otherwise shall be on Seller.

9. ADJUSTMENTS. Water and sewer use charges, real estate taxes and any other municipal assessments for the then current municipal tax year shall be apportioned to Seller as of the Closing. Real estate transfer taxes due on the transfer will be paid in accordance with Maine law.

10. DEFAULT/DAMAGES. Should Seller fail to fulfill Seller's obligations hereunder, Buyer may pursue all available remedies, including specific performance and reasonable attorney's fees. Should Buyer fail to fulfill Buyer's obligations hereunder, Seller may also pursue its remedies in law or in equity, recognizing that Buyer's obligation to proceed to Closing for either the Double Barracks or the Hospital is entirely discretionary with Buyer.

11. NOTICES. Except as otherwise specifically provided herein, any notice, demand or other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally, or on the 2<sup>nd</sup> business day after mailing by first-class mail, registered or certified, return receipt requested, addressed to the party at the address set forth herein. Either party may change its address for purposes hereof by giving the other party notice of a new address.

If to Seller: Joseph E. Gray, City Manager  
City of Portland, Maine  
389 Congress Street  
Portland, ME 04101

With a copy to: Mary Costigan  
Associate Corporation Counsel  
389 Congress Street  
Portland, ME 04101

If to Buyer: Ronald N. Ward, Agent  
The Inn At Diamond Cove, LLC  
P.O. Box 9781  
Portland, ME 04104

12. RECORDING. This Agreement or a memorandum thereof may, at the option of either party, be recorded in the Cumberland County Registry of Deeds at the expense of the recording party.

13. MISCELLANEOUS.

- a. Counterparts. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original and such counterpart shall constitute one in the same instrument. This Agreement may be transmitted between the parties by facsimile and signatures appearing on faxed instruments shall be treated as original signatures.
- b. Assignment/Successors. The rights and obligations of Buyer may be assigned by Buyer provided that such assignee agrees to assume all of Buyer's obligations hereunder. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- c. Entire Agreement/Amendment. Any and all prior and contemporaneous discussions, agreements and understandings of the parties are merged in this Agreement, which alone fully and completely expresses their entire agreement. This Agreement may not be modified, waived or amended except in writing assigned by the parties hereto. No waiver of any breach or term hereof shall be effective unless made in writing signed by the party having the right to enforce such breach, and no such waiver shall be construed as a waiver of any subsequent breach. No course of dealing or delay or omission on the part of any party in exercising any right or remedy shall operate as a waiver thereof or otherwise prejudicial thereto.
- d. Invalid or Unenforceable Terms. If any term or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each term of this Agreement shall be valid and be enforced to the fullest extent permitted by law. All paragraph headings in this Agreement are for convenience of reference only and have no independent legal significance. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maine.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the dates hereinafter set forth.

WITNESS:

CITY OF PORTLAND, MAINE

Linda Miller

By: Joseph E. Long  
Its: City of Portland

Date of Seller's acceptance of this Agreement:

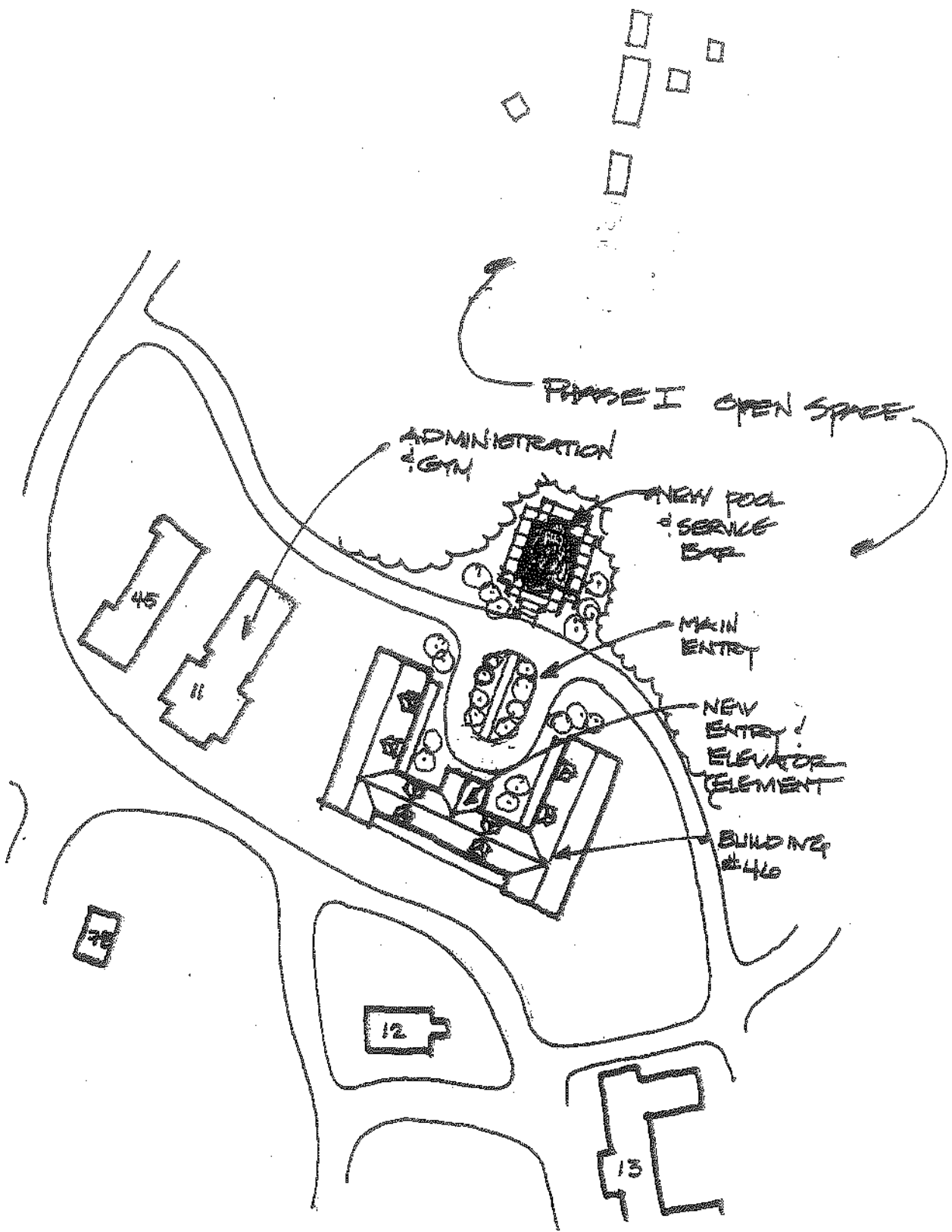
~~April~~ May 4, 2007

Linda Miller

THE INN AT DIAMOND COVE, LLC  
By: Ronald N. Ward  
Its: Agent

Effective Date of this Agreement:

~~April~~ May 4, 2007



# SITE PLAN

2/10/07

## FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

This AMENDMENT, made as of this 13<sup>th</sup> day of September, 2007 by and between the CITY OF PORTLAND, MAINE, a Maine municipal corporation ("Seller") and THE INN AT DIAMOND COVE, LLC, a Maine limited liability company with a place of business in said Portland, Maine ("Buyer"), as follows:

RECITALS:

1. Seller and Buyer are parties to a Purchase and Sale Agreement with respect to certain real estate located at Fort McKinley, Great Diamond Island, Portland, Maine, said Purchase and Sale Agreement being dated May 4, 2007 ("P&S").
2. Section 5 of the P&S requires Buyer's notice of election to proceed to acquire the subject premises, specifying September 14, 2007 for the Double Barracks and September 14, 2008 for the Hospital.
3. Buyer has determined that its anticipated Project will require supplemental approvals by the Portland Planning Board and/or Portland City Council which, in turn, will require the submission of the appropriate applications and supporting materials.
4. Buyer will not be able to secure development financing without final and complete administrative approvals, none of which can be accomplished before September 14, 2007.
5. Seller and Buyer are agreed that it is in the best interests of both for Buyer to continue to pursue its proposed development and to do so on the basis of extended time frames.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable considerations the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows:

AGREEMENTS:

1. The Double Barracks Exercise Date stated in Section 5 of the P&S is hereby amended to August 1, 2008.
2. The Hospital Exercise Date stated in Section 5 of the P&S is hereby amended to August 1, 2009.
3. Except as specifically amended herein, the terms of the P&S are hereby ratified and reaffirmed.

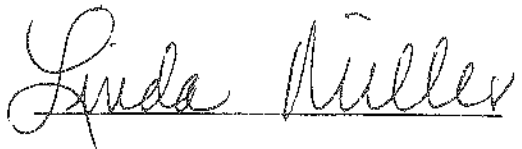
IN WITNESS WHEREOF, Seller and Buyer have executed this First Amendment as of the date here and above set forth.

WITNESS:


CITY OF PORTLAND, MAINE

A handwritten signature in cursive, possibly reading 'M. S.', written over a horizontal line.

By:   
Joseph E. Gray, Jr.  
les Manager

A handwritten signature in cursive that reads 'Linda Miller', written over a horizontal line.

THE INN AT DIAMOND COVE, LLC

By:   
Ronald N. Ward

Its: Agent



SECOND AMENDMENT  
TO AMENDED AND RESTATED GENERAL DECLARATION  
OF COVENANTS AND RESTRICTIONS  
Diamond Cove, Great Diamond Island, Portland, Maine

THIS CERTIFICATE OF SECOND AMENDMENT is made by the DIAMOND COVE HOMEOWNERS ASSOCIATION, a Maine nonprofit corporation (the "Association"), with the affirmative vote of at least sixty-seven percent (67%) in voting interest of the owners of the Association.

WHEREAS, the rights and obligations of the members of the Association, the owners of properties at Diamond Cove on Great Diamond Island in Portland, Maine, is governed by that certain Amended and Restated General Declaration of Covenants and Restrictions dated December 17, 1993 and recorded at the Cumberland County Registry of Deeds in Book 11277, Page 322; as modified by First Supplement to Amended and Restated General Declaration of Covenants and Restrictions dated February 25, 1994 and recorded at said Registry of Deeds in Book 11307, Page 200, Amended and Corrected Second Supplement to Amended and Restated General Declaration of Covenants and Restrictions dated August 27, 1999 and recorded at said Registry of Deeds in Book 15011, Page 87, Third Supplement to Amended and Restated General Declaration of Covenants and Restrictions dated February 5, 2001 and recorded at said Registry of Deeds in Book 16009, Page 317 (the "Third Supplement"), and Fourth Supplement to Amended and Restated General Declaration of Covenants and Restrictions dated July 26, 2002 and recorded at said Registry of Deeds in Book 17985, Page 251; and as amended by Amendment to Amended and Restated General Declaration of Covenants and Restrictions dated July 26, 2002 and recorded at said Registry of Deeds in Book 17897, Page 347 (collectively, as modified and amended, the "Declaration");

WHEREAS, with the Third Supplement, fourteen (14) residential lots were created in Building 46 at Diamond Cove;

WHEREAS, to date, said fourteen (14) residential lots have remained unsold and undeveloped, and currently are owned by the City of Portland, a body politic and corporate with a place of business at 389 Congress Street, Portland, Maine 04101; and

WHEREAS, the following Second Amendment to the Declaration was adopted to provide for the development of the residential lots within Building 46 (the "Double Barracks Lots"), and to amend the Declaration in certain other respects;

NOW, THEREFORE, the undersigned officers of the Association hereby certify that the following Second Amendment to the Declaration was adopted at a meeting of the Association duly called and held in accordance with the Association Bylaws by an affirmative vote of at least sixty-seven percent (67%) in voting interest of the owners, and that all required notices were duly served upon owners, Eligible Mortgage Holders, the Maine Audubon Society, the Casco Bay Island Development Association, and the Island Institute.

1. Waiver of Assessments on Double Barracks Lots.

- a. Upon transfer by the City of Portland of all Double Barracks Lots to a developer approved by the Association's Board of Directors (the "Approved Developer"):
  - i. Any lien on the Double Barracks Lots held by the Association for past assessments due shall be released of record; and
  - ii. No Double Barracks Lot shall be subject to assessment pursuant to Article 8 of the Declaration until "developed" (as hereinafter defined); provided, however, that such temporary waiver of assessments shall expire, and all Double Barracks Lots shall be subject to assessment (whether developed or not), on July 1, 2008.
- b. As used herein, a Lot shall be deemed "developed" when a certificate of occupancy for such Lot is issued by the City of Portland. For purposes of calculating assessments by the fraction set forth in the third paragraph of Section 8.1.3 of the Declaration, Double Barracks Lots shall not be included in the denominator of such fraction until subject to assessment pursuant to this Section.

2. Voting of Double Barracks Lots. Upon transfer by the City of Portland of all Double Barracks Lots to the Approved Developer, no Double Barracks Lot shall be entitled to a vote in accordance with Section 6.2 of the Declaration until subject to assessment pursuant to Section 1 above.

3. Increase in Number of Double Barracks Lots. The Approved Developer may increase the number of individual Double Barracks Lots within Building 46, from fourteen (14) up to a maximum of twenty two (22) residential lots, provided that:

- a. The Approved Developer shall prepare at its sole cost, for the review and approval by the Association's Board of Directors, (i) a Supplement to the Declaration to describe the changes made, and (ii) a revised Phase I Plan (Sheet 3 of 7) to show the changes made, showing the location of all boundaries of the Double Barracks Lots; and
- b. The Approved Developer shall obtain, at its sole cost and to the reasonable satisfaction of the Association's Board of Directors, any and all necessary approvals, including (without limitation): (i) from the City of Portland; (ii) from the State of Maine Department of Environmental Protection; and (iii) from any mortgagee(s) of the Double Barracks Lots.

Any such change shall be effective when the Supplement to the Declaration and the revised Phase I Plan(s) are executed by both the President and Secretary of the Association and then recorded at the Cumberland County Registry of Deeds.

4. Hotel Condominium. The Approved Developer may declare Building 46 as a condominium, and the units so created shall be the Double Barracks Lots and shall be treated as residential lots for all purposes under the Declaration, provided that:
- a. Notwithstanding anything to the contrary in the provisions of Section 4.1 of the Declaration, Building 46 may be used for purposes consistent with a residential hotel condominium, including reasonable and customary on-site services limited to the owners and their guests and tenants in residence, but specifically excluding third-party functions or any on-site commercial food or beverage operation, subject to all applicable governmental land use laws and ordinances. Each Double Barracks Lot shall only be used for no more than one single family dwelling; provided, however, that rental tenants shall not be subject to the "single family" restriction of Section 2.15 of the Declaration, but shall be limited to a maximum occupancy of six (6) persons per Double Barracks Lot.
  - b. Notwithstanding anything to the contrary in the provisions of Section 4.12 of the Declaration, the Approved Developer may incorporate directional signage within the existing signage of the Association and may place a single sign at the entry driveway to Building 46, subject to applicable governmental land use laws and ordinances and the approval of the Association's Board of Directors.

In connection with any such declaration of condominium for Building 46:

- c. The condominium shall be subject in all respects to the Declaration (as hereby amended), and any lien established upon a Double Barracks Lot pursuant to the Declaration shall be prior to any lien established in connection with the condominium.
- d. With respect to any action taken or contemplated to be taken by the condominium association or any condominium hotel management company for Building 46 (any such association or company responsible for the maintenance of the Building 46 condominium common areas hereinafter referred to as the "Building 46 Manager"), the Association shall have the power to veto any such action taken or contemplated to be taken by the Building 46 Manager that is inconsistent with the Declaration (as hereby amended), and the Association also shall have the power to require specific action to be taken by the Building 46 Manager in connection with the obligations and responsibilities set forth in the Declaration, such as requiring that Building 46 and all improvements thereto be kept and maintained in clean, safe, attractive and sightly condition and in good repair.
- e. The Approved Developer shall have the right to designate the front, side and rear yards currently allocated to the Double Barracks Lots (pursuant to Section 10.3 of the Declaration) as common area for use in common (together with the courtyard area allocated to Building 46 pursuant to Section 10.2 of the Declaration) by all owners, guests and tenants of the owners of the Double Barracks Lots, in which

event the revised Phase I Plan submitted by the Approved Developer pursuant to Section 3(a) above shall be revised accordingly.

- f. If the Building 46 Manager maintains, repairs and landscapes the front, side and rear yards and the courtyard area allocated to the Double Barracks Lots (pursuant to Section 10 of the Declaration) to a standard at least equal to that required by the Declaration, as reasonably determined by the Association's Board of Directors, then any charge included in the Association's assessments to Phase I lot owners for maintenance, repairs and landscaping performed by the Association within such Phase I areas shall be deducted from the Association's assessments to the owners of the Double Barracks Lots. If the Building 46 Manager fails to maintain, repair and landscape the front, side and rear yards and the courtyard area allocated to the Double Barracks Lots to a standard at least equal to that required by the Declaration, as reasonably determined by the Association's Board of Directors, then the Association shall have the right (but no obligation) to cause such maintenance, repair and landscaping to be performed at the cost of the owners of the Double Barracks Lots.
- g. Either the Approved Developer or the Building 46 Manager shall maintain with respect to Building 46 commercial general liability insurance having limits in such amounts as shall be reasonably acceptable to the Association, under a policy covering the Association as an additional insured, to be written on an occurrence basis. Certificates of such insurance shall be delivered to the Association at or prior to the commencement of construction of the development of Building 46, and thereafter upon request and within twenty (20) days prior to the expiration of such policies. The policy providing such insurance shall include a provision that such insurance shall not be terminated or substantially changed by the insurer without twenty (20) days' prior written notice to the Association.
5. Golf Carts and Other Vehicles. Notwithstanding the provisions of Section 4.7 of the Declaration, the owners of the Double Barracks Lots shall not have the right to own and operate any golf cart, neighborhood electrical vehicle, electric personal assistive mobility device (a/k/a human transporter), low-speed vehicle as currently defined in 29-A M.R.S.A Section 101, or any similar vehicle, unless (i) the City of Portland amends its applicable Conditional Rezoning Agreement to allow more than eighty-two (82) such vehicles within Phase I of the Diamond Cove development, and (ii) the Association's Board of Directors approves such ownership and operation. One or more vehicles may be operated for the benefit of the owners of the Double Barracks Lots for service purposes, including the common transportation of goods and passengers, provided that (a) the Association's Board of Directors approves the number (if that number exceeds two) and type of such vehicle(s), (b) the Approved Developer shall obtain, at its sole cost and to the reasonable satisfaction of the Association's Board of Directors, any and all necessary approvals (including, without limitation, from the City of Portland) for such vehicle(s), and (c) liability insurance with respect to such vehicle(s) is maintained, according to the terms set forth in Section 4(g) above.

6. Swimming Pool and Service Bar Area. In connection with the development of Building 46, the Approved Developer shall construct, at its sole cost, an in-ground swimming pool and service bar area for use by the owners, guests and tenants of the owners of the Double Barracks Lots, and (subject to reasonable rules and regulations) other members of the Association, in a location at the common properties to be agreed upon by the Approved Developer and the Association's Board of Directors. The common properties necessary for such swimming pool and service bar area shall be leased by the Association to the Building 46 Manager, subject to reasonable terms and conditions as determined by the Association's Board of Directors. The Approved Developer shall obtain, at its sole cost and to the reasonable satisfaction of the Association's Board of Directors, any and all necessary approvals (including, without limitation, from the State of Maine Department of Environmental Protection) for the proposed swimming pool and service bar area, which may be located within "Open Space Recreation Areas" of Phase I if specifically permitted by such approvals.
7. Wastewater Treatment System. The Approved Developer shall prepare at its sole cost, for the review and approval by the Association's Board of Directors, a plan of improvements to the existing wastewater treatment system necessitated by the development of the Double Barracks Lots. Such approval by the Association's Board of Directors of the plan of improvements shall not be unreasonably withheld, and any withholding of such approval shall be based upon the report of a licensed engineer commissioned by the Association. The Approved Developer shall obtain, at its sole cost and to the reasonable satisfaction of the Association's Board of Directors, any and all necessary approvals (including, without limitation, from the State of Maine Department of Environmental Protection) for such approved improvements and development. Commencing with the first year that all Double Barracks Lots are "developed" and subject to assessment pursuant to Section 1 above, the Association will reimburse the Approved Developer one-half of the costs of such improvements, up to a maximum of \$100,000, to be paid by the Association in equal installments over five years.
8. Approved Developer; Assignment. This Second Amendment shall not take effect unless and until the City of Portland shall convey all Double Barracks Lots to the Approved Developer. The Approved Developer may not assign its rights or obligations hereunder without the prior written consent of the Association's Board of Directors, which consent shall not be unreasonably withheld.
9. Termination. In the event that the Approved Developer shall not substantially commence construction of the development of Building 46 (as evidenced by the obtaining of a building permit from the City of Portland and commencement of construction activity by the Approved Developer) by July 1, 2008, then at the election of the Association's Board of Directors at any time prior to substantial commencement of construction, the provisions hereinbefore set forth in Section 3 (Increase in Number of Double Barracks Lots), Section 4 (Hotel Condominium, and/or Section 6 (Swimming Pool and Service Bar Area) may be terminated and rendered null and void. Any such election by the Board of Directors shall be effective when a notice of such termination is executed by both the

President and Secretary of the Association and then recorded at the Cumberland County Registry of Deeds.

10. Declaration. Except as set forth in this Second Amendment, the Declaration shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Diamond Cove Homeowners Association has caused this instrument to be executed by its President and Secretary, as of July \_\_\_\_, 2007.

DIAMOND COVE HOMEOWNERS ASSOCIATION

Witness

By: Philip J. Guarino  
Philip J. Guarino, its President

Witness

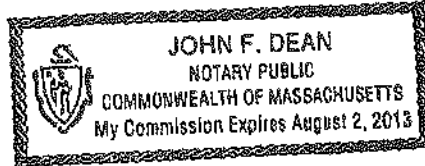
By: John Burge  
John Burge, its Secretary

STATE OF MAINE  
COUNTY OF CUMBERLAND

July \_\_\_\_, 2007

Then personally appeared the above named Philip J. Guarino, President of Diamond Cove Homeowners Association, and acknowledged the foregoing to be his free act and deed in his said capacity and the free act and deed of said Diamond Cove Homeowners Association.

Before me,



[Signature]  
Notary Public / Attorney-at-Law  
Print Name: JOHN F. DEAN

PAUsers\lucalocagn\DCCHA\Garden\2A.mdt6c.doc

Commonwealth of Massachusetts  
Mundick, ss.

On this 15<sup>th</sup> day of August, 2007, before me, the undersigned notary public, personally appeared

Philip J. Guarino  
proved to me through satisfactory evidence of identification, which were MAD, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

[Signature]  
Notary Public

SEAL

Received  
Recorded Register of Deeds  
Aug 28, 2007 02:19:03P  
Cumberland County  
Pamela E. Lovley



DeLUCA-HOFFMAN ASSOCIATES, INC.  
CONSULTING ENGINEERS

775 MAIN STREET  
SUITE 8  
SOUTH PORTLAND, MAINE 04106  
TEL. 207 775 1121  
FAX 207 879 0896

- SITE PLANNING AND DESIGN
- ROADWAY DESIGN
- ENVIRONMENTAL ENGINEERING
- PERMITTING
- AIRPORT ENGINEERING
- CONSTRUCTION ADMINISTRATION
- LANDSCAPE ARCHITECTURE

April 29, 2008

Ms. Richard Knowland, Senior Planner  
Department of Planning and Development  
City of Portland  
389 Congress Street  
Portland, ME 04101

**Subject: The Inn at Diamond Cove, LLC  
Conditional Zoning Amendment  
Diamond Cove, Great Diamond Island  
Wastewater Treatment and Capacity**

Dear Mr. Knowland:

On behalf of The Inn at Diamond Island LLC, our office has prepared a summary of the wastewater treatment capacity available on Great Diamond Island in support of the applicant's requested proposal for the renovation and conversion of the "Double Barracks" (Building #46) and the "Hospital" (Building #19) into residential hotel condominiums.

The current wastewater treatment system consists of a gravity sewer collection system that conveys sanitary sewer flows to three sand filter beds for treatment prior to overboard discharge to Casco Bay. The wastewater treatment system is licensed by the MeDEP (Permit #W006931-41-A-N) to accept and treat 35,000 gallons per day based upon a monthly average.

The existing uses that are currently serviced by the wastewater treatment system and their associated sewer flow rates based upon Table 501.2 of the Maine Subsurface Waste Water Disposal Rules (MSWWDR) are summarized as follows:

2 one-bedroom units @ 90 gpd per bedroom	360 gpd
15 two-bedroom units @ 90 gpd per bedroom	2,700 gpd
53 three-bedroom units @ 90 gpd per bedroom	14,310 gpd
9 four-bedroom units @ 90 gpd per bedroom	3,240 gpd
200-seat restaurant with 25 employees	
@ 30 gpd per seat	6,000 gpd
@ 15 gpd per employee	375 gpd
2 administrative offices	480 gpd
Marina pump out	90 gpd
Special event tent	1,750 gpd
Gift store with 2 employees @ 15 gpd per employee	30 gpd
Total flow =	29,335 gpd

It should be noted that the MSWWDR design flow rates are generally conservative. For comparison, our office reviewed the flow meter records for the wastewater treatment system from the period from

Mr. Richard Knowland  
April 29, 2008  
Page 2

October 2005 through March 2008. These flow records were provided by the operator (Diamond Cove Home Owners Association). Based upon a review of this data, the annual records for 2006 showed the highest flow rates over the annual basis; therefore, these records were used on a conservative basis for comparison with flow rates computed from the MSWWDR. A detailed summary of the flow records is appended to this letter. In addition, a graphical presentation of the flow meter records is also appended to this letter which depicts the seasonal fluctuations of flow rates throughout the year to the wastewater treatment system.

In general, the period from late fall to early spring (October through April) represents the least occupancy and usage on the island. The seasonal uses such as the marina, special event tent and restaurant are closed and only a limited number of year-round residents remain on the island. The peak period of activity and use on the island occurs during the period of May through September.

As indicated in the daily and monthly flow records, the highest flows during 2006 occurred during the month of May through August. Specifically, the highest monthly average daily flow rates occurred in May with a flow rate of 24,066 gpd, which correlates reasonably well with the 29,335 gpd flow rate computed based upon the MSWWDR.


The proposed renovation of the "Double Barracks" will create twenty residential units. These twenty units consist of six 1-bedroom units, six 2-bedroom units and eight 3-bedroom units for a total of 36 bedrooms with a projected daily flow rate of 3,240 gpd (90 gpd per bedroom). Therefore the addition of the "Double Barrack" renovation will result in a total flow of 32,575 gpd (29,335 gpd plus 3,240 gpd) resulting in a remaining surplus flow 2,425 gpd that is allocated to for the future "Hospital" renovation. This surplus future flow allocation amount of 2,425 gpd is more than adequate up to twelve 2-bedroom units.

Based upon a review of the 2006 wastewater treatment system flow records, the existing wastewater treatment system has sufficient capacity to accommodate the projected flows associated with the planned renovation of the "Double Barracks" as well as provide sufficient reserve capacity for the future renovation of the "Hospital".

Please contact our office with any questions you may have concerning this letter.

Sincerely,

DeLUCA-HOFFMAN ASSOCIATES, INC.

  
Joseph A. Laverriere, P.E.  
Senior Engineer

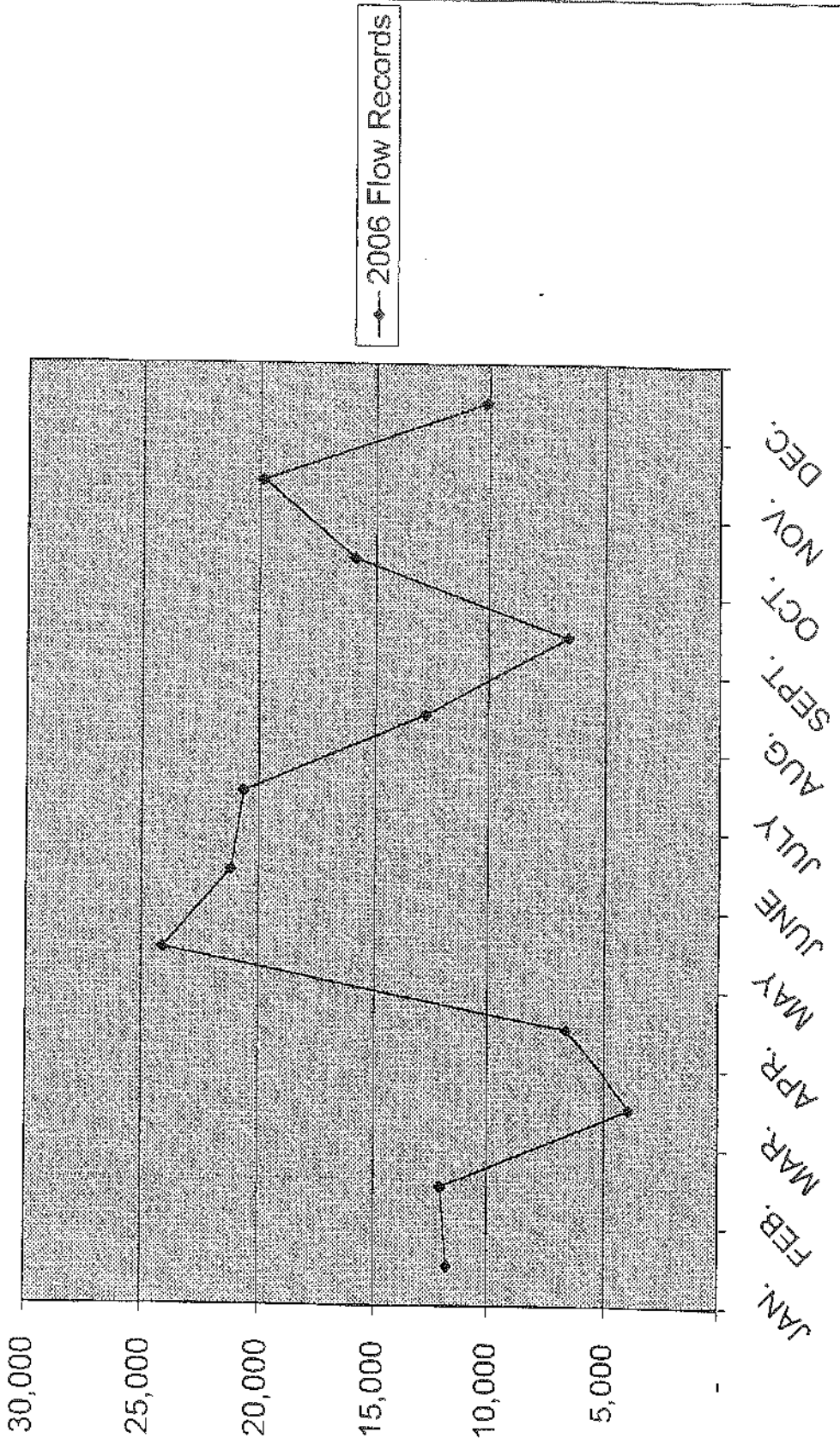
JAL/sq/JN2769/Knowland-4-29-08

Attachments

C: David Bateman – The Inn at Diamond Cove, LLC



### Diamond Cove Monthly ADF (gallons)



DIAMOND COVE  
SANITARY SEWER FLOW RECORDS

JANUARY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		20,943
2		17,300
3		12,732
4		6,594
5		8,916
6		8,338
7		6,273
8		7,053
9		6,524
10		6,128
11		14,079
12		11,011
13		9,201
14	Y	23,946
15		19,156
16		13,632
17		11,735
18	Y	23,619
19		16,301
20		12,723
21		12,586
22		21,845
23		N/A
24		7,685
25		11,202
26		7,502
27		8,081
28		8,145
29	Y	7,393
30		7,716
31		5,629

TOTAL MONTHLY FLOW	353,887	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	11,797	GALLONS

FEBRUARY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		6,242
2		6,098
3	Y	41,970
4		40,523
5	Y	41,741
6		27,510
7		18,551
8		14,868
9		12,938
10		11,007
11		11,008
12		6,801
13		8,764
14		7,497
15		6,638
16		6,977
17		7,692
18		6,771
19		6,575
20		6,187
21		6,431
22		5,592
23		4,661
24		4,874
25		5,546
26		5,930
27		3,844
28		2,860

TOTAL MONTHLY FLOW	337,911	GALLONS
TOTAL DAYS	28	
AVERAGE DAILY FLOW	12,068	GALLONS

MARCH 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		2,889
2		2,667
3		2,804
4		3,176
5		3,695
6		3,460
7		3,161
8		2,623
9		2,793
10	Y	2,889
11		3,086
12		2,767
13		3,963
14	Y	8,453
15		6,564
16		5,744
17		5,703
18		5,473
19		5,415
20		4,529
21		4,321
22		3,922
23		3,384
24		3,800
25		3,545
26		3,479
27		3,005
28		2,766
29		2,549
30		3,099
31		2,570

TOTAL MONTHLY FLOW	116,554	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	3,822	GALLONS

APRIL 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		3,173
2		3,018
3		2,682
4	Y	16,612
5		14,998
6		13,314
7		11,267
8		10,679
9		8,627
10		7,705
11		7,075
12		5,419
13	Y	6,437
14		7,284
15		7,450
16		6,713
17		6,664
18		5,432
19		4,938
20		3,523
21		3,672
22		5,196
23	Y	4,941
24	Y	6,300
25		2,950
26		3,606
27		3,650
28		5,021
29		6,056
30		4,574

TOTAL MONTHLY FLOW	198,855	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	6,629	GALLONS

MAY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		3,610
2	Y	61,264
3	Y	46,457
4		30,166
5		20,189
6		15,428
7		12,633
8		10,624
9		11,337
10	Y	16,413
11	Y	25,256
12	Y	54,843
13	Y	61,136
14	Y	37,900
15	Y	40,382
16	Y	53,463
17		32,703
18		24,137
19	Y	26,672
20		18,313
21		17,670
22		19,535
23		15,550
24		13,949
25		13,051
26		11,273
27		11,232
28		13,920
29		11,274
30		7,663
31		8,057

TOTAL MONTHLY FLOW	746,080	GALLONS
TOTAL DAYS	31	
AVERAGE DAILY FLOW	24,066	GALLONS

JUNE 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		8,001
2	Y	10,201
3	Y	36,839
4	Y	40,365
5		25,512
6		17,350
7	Y	44,665
8	Y	67,444
9		46,094
10	Y	66,675
11		33,683
12		27,332
13		17,044
14		17,395
15		16,030
16		13,469
17		10,180
18		10,572
19		10,853
20		8,645
21		10,018
22		10,181
23		11,749
24	Y	14,723
25		14,542
26		10,885
27		10,254
28	Y	9,083
29		12,500
30		12,311

TOTAL MONTHLY FLOW	634,466	GALLONS
TOTAL DAYS	30	
AVERAGE DAILY FLOW	21,150	GALLONS

DIAMOND COVE  
SANITARY SEWER FLOW RECORDS

JULY 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		13,226
2		15,615
3		14,301
4		12,875
5		11,671
6		11,015
7		12,674
8		14,476
9		13,111
10		5,078
11	Y	12,349
12		29,727
13	Y	44,492
14		28,553
15		26,711
16		20,875
17		18,769
18		15,611
19		19,816
20		15,543
21		31,525
22	Y	35,699
23	Y	35,716
24		30,384
25		22,194
26		21,371
27		20,367
28		25,899
29		24,604
30		16,955
31		18,459

TOTAL MONTHLY FLOW	638,941 GALLONS
TOTAL DAYS	31
AVERAGE DAILY FLOW	20,611 GALLONS

AUGUST 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		21,204
2		18,035
3		17,341
4		17,867
5		16,748
6		17,871
7		14,803
8		14,145
9		14,531
10		13,472
11		15,730
12		13,111
13		14,207
14		11,851
15	Y	13,340
16		10,242
17		10,871
18		4,286
19		13,761
20	Y	14,100
21		9,221
22		11,111
23		10,233
24		6,542
25		15,817
26		13,019
27		7,844
28	Y	7,523
29		5,594
30		7,314
31		6,165

TOTAL MONTHLY FLOW	396,609 GALLONS
TOTAL DAYS	31
AVERAGE DAILY FLOW	12,794 GALLONS

SEPTEMBER 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		7,086
2		8,563
3	Y	6,883
4		10,157
5		5,205
6		4,687
7		4,568
8		13,372
9		2,781
10		5,345
11		4,645
12		5,281
13		5,133
14		4,028
15		5,375
16		7,615
17		5,850
18		7,132
19		18,248
20		7,478
21		5,856
22		5,781
23	Y	4,484
24		5,422
25		5,422
26		5,422
27		4,310
28		5,881
29	Y	6,016
30		7,835

TOTAL MONTHLY FLOW	197,776 GALLONS
TOTAL DAYS	30
AVERAGE DAILY FLOW	6,592 GALLONS

OCTOBER 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		5,288
2		7,223
3		7,066
4		6,462
5		3,920
6		6,048
7		5,827
8		4,389
9		4,833
10		2,674
11		17,253
12	Y	26,465
13		12,939
14		12,470
15		9,547
16		8,440
17		12,345
18		9,148
19		10,397
20	Y	31,103
21		27,606
22		25,704
23		19,094
24		12,004
25		14,696
26		12,322
27		16,193
28	Y	69,120
29		41,218
30		27,444
31		22,385

TOTAL MONTHLY FLOW	491,592 GALLONS
TOTAL DAYS	31
AVERAGE DAILY FLOW	15,858 GALLONS

NOVEMBER 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1		16,283
2	Y	12,248
3		12,405
4		9,955
5		10,474
6		8,372
7		12,690
8	Y	48,530
9		58,945
10		26,115
11		31,206
12	Y	23,750
13	Y	32,203
14	Y	60,148
15		20,888
16	Y	24,845
17	Y	34,420
18		19,794
19		22,107
20		11,268
21		12,086
22		12,675
23		16,085
24		12,127
25		13,313
26		12,799
27		8,480
28		7,664
29	Y	6,581
30	Y	6,250

TOTAL MONTHLY FLOW	595,015 GALLONS
TOTAL DAYS	30
AVERAGE DAILY FLOW	19,834 GALLONS

DECEMBER 2006

DAY	RAIN (Y/N)	DAILY FLOW (GALLONS)
1	Y	15,821
2		12,050
3		10,618
4		8,339
5		8,751
6		6,896
7		6,421
8		5,112
9		5,288
10		6,235
11	Y	5,704
12		5,704
13	Y	4,431
14		5,475
15	Y	4,726
16	Y	7,964
17		5,131
18		4,156
19		6,057
20		6,346
21		3,038
22	Y	5,136
23	Y	23,458
24		15,550
25		18,489
26		17,737
27		16,056
28		12,879
29		19,924
30		19,315
31		17,511

TOTAL MONTHLY FLOW	313,402 GALLONS
TOTAL DAYS	31
AVERAGE DAILY FLOW	10,110 GALLONS

Ronald N. Ward

(207) 772-1941

rnward@dwmlaw.com

(207) 772-3627 Fax  
(800) 727-1941

245 Commercial Street  
Post Office Box 9781  
Portland, ME 04104-5081

www.dwmlaw.com

ADMITTED IN ME ONLY

Daniel Amory\*  
Harry B. Pringle\*  
Richard A. Spencer\*  
Gerald M. Zelint  
Ronald N. Ward\*  
David J. Becker\*  
John S. Kaminski\*  
William L. Plouffe\*  
Jerrold A. Crouter\*  
Michael E. High\*  
Richard A. Shnay\*  
Bruce W. Smith\*  
Gary D. Vogel\*  
E. William Stockmeyer\*  
Benjamin E. Marcus\*  
Melissa A. Heway\*  
Eric R. Herlan\*  
Jeanne M. Kincaid\*  
Gregory W. Sample\*  
Daniel J. Rose\*  
Kaihn Smith, Jr.\*  
Daine J. Nathanson\*  
Edward J. Kelleher\*  
S. Campbell Badger\*  
Melissa L. Cilley\*  
Amy K. Tohao\*  
David S. Sherman, Jr.\*  
Robert P. Nadeau\*  
Stephen D. Jordan\*  
Catherine D. Alexander\*  
Brian D. Willing\*  
John Usnik, Jr.\*  
Aaron M. Pratt\*  
James C. Schwelenbach\*  
Elizabeth D. McEvoy\*  
Jeffrey T. Piamplano\*  
Peter C. Felmy\*  
Jessica M. Emmons\*  
Jonathan M. Goodman\*  
Mika K. Reynolds\*  
Abigail Greene Goldman\*  
Amy J. Visentin\*  
Sara S. Hellestedt\*

## MEMORANDUM

TO: City of Portland Planning Department (Knowland)  
FROM: Ronald N. Ward  
RE: Ft. McKinley Settlement Agreement dated March 2, 1989  
DATE: May 19, 2008

At the initial workshop session for The Inn At Diamond Cove application on April 22, 2008, references were made by individuals announcing themselves as members of Diamond Island Association and Casco Bay Island Development Association to an agreement entered into by the former developer of the Ft. McKinley Project and their environmental groups. I researched our historical files on this development and found a single agreement which included either of these organizations, that being the Settlement Agreement dated April 12, 1991 which was joined by Casco Bay Island Development Association ("CBIDA"). I submitted that agreement with my prior memorandum dated April 29, 2008. The simple conclusion that I drew was that the 1991 Agreement had no material bearing on the site plan review for the current Project.

In anticipation of the Planning Board's workshop on May 13, 2008, another document was submitted by one of the Diamond Island Association members. That Agreement, a copy of which is attached hereto, was dated March 2, 1989 between the original developer, Diamond Cove Associates, and the environmental opposition, Maine Audubon Society, Conservation Law Foundation and Island Institute ("1989 Agreement").

The 1989 Agreement is even less relevant to the current site review than the 1991 Agreement, which at least included CBIDA. The 1989 Agreement deals with issues and conditions long since completed and in place. The primary issue in the 1989 Agreement is wastewater discharge and the location of the discharge pipe. It goes on to touch upon the issues of overall project density, motor vehicle access and design review, all of which have been recognized for years and are not issues in the current application.

### Consultants

Roger P. Kelley  
Labor Relations &  
Conflict Management

Ann S. Chapman  
Policy & Labor Relations

Christopher P. O'Neil  
Governmental Affairs

Michael J. Opuda Ph.D.  
Special Education

### Of Counsel

Harold E. Woodsum, Jr.\*  
Hugh G. E. MacMahon\*  
Joseph L. Dalafield III\*  
Robert L. Gips\*  
Donald A. Kopp\*

\* Admitted in Maine  
† Admitted in New Hampshire  
◇ Admitted in Missouri

While the arguments of Diamond Island Association and CBIDA were unclear from the public testimony, the inference which they appeared to deliver was that their organizations were somehow required to approve the current site application before it could be considered finally approved.

We find nothing in the 1989 or 1991 Agreements to support a conclusion that any of the parties to those Agreements have any standing to demand their specific approval before the current site plan application may be finally approved. The current Project is located entirely within Phase I of the historic development and has no impacts upon scenic vistas. All of the certifications for historic rehabilitation are either in place or are in process. The current Project does not propose to change or challenge any of the existing Agreements, it intends to abide by all Agreements, including those with the original environmental opposition, as those may have been amended over the intervening years. Diamond Island Association and CBIDA, through authorized spokespeople, clearly have the right to appear and state their views, but there is no record evidence that they have any veto power over the regulatory agencies.

With respect to review by the Maine DEP, the current approval process will include DEP review, particularly with respect to wastewater discharge.

RNW:kjl

Enclosure

cc: The Inn At Diamond Cove  
Penny Littell, Esq.

AGREEMENT

This Agreement is entered into this 2nd day of March, 1989 by and between Diamond Cove Associates, of Portland, Maine, Maine Audubon Society, of Falmouth, Maine, Conservation Law Foundation, of Boston, Massachusetts, and Island Institute, of Rockland, Maine.

WHEREAS, Diamond Cove Associates (hereinafter "DCA") has proposed a residential and commercial development for property which it owns on the northerly portion of Great Diamond Island, Portland, Maine; said development consisting of 134 "condominium" units and 5 commercial and 2 recreational buildings (said "condominium" units, commercial and recreational buildings being Phase I of the project) and 70 single family house lots (said house lots being Phase II of the project); and

WHEREAS, DCA received Site Location of Development Law approval (hereinafter "Site Location Order") for Phase I of the project from the Maine Department of Environmental Protection (hereinafter "DEP") on December 10, 1986; and

WHEREAS, DCA received approval (hereinafter "Waste Discharge License") for the discharge of 40,000 g.p.d. of wastewater from Phase I of the project from the DEP on December 10, 1986; and

WHEREAS, DCA has applied to the DEP for approval of Phase II of the project under the Site Location of Development Law and said application has been tabled; and

WHEREAS, DCA has applied to the DEP for an amendment to its existing Waste Discharge License to provide for an incremental discharge of 8,500 g.p.d. of wastewater associated with Phase II of the project; and

WHEREAS, DCA has applied to the United States Environmental Protection Agency (hereinafter "EPA") for a National Pollutant Discharge Elimination System (hereinafter "NPDES") permit to serve the project; and

WHEREAS, the EPA has issued a draft NPDES permit, dated December 7, 1988, which draft permit would authorize a flow of 40,000 g.p.d. treated to a "zero fecal coliform" standard from Phase I of the project; and

WHEREAS, Maine Audubon Society, Conservation Law Foundation and Island Institute are concerned about the environmental impacts of the wastewater discharge from both Phase I and Phase II of the project and have opposed issuance of the NPDES permit, as drafted, as well as the 8,500 g.p.d. increment to the Waste Discharge License; and

WHEREAS, DCA desires to avoid the continued opposition of Maine Audubon Society, Conservation Law Foundation and Island Institute to the issuance of the NPDES permit and the 8,500 g.p.d. incremental wastewater discharge; and

WHEREAS, Maine Audubon Society and Island Institute are concerned about a variety of non-wastewater related issues associated with both Phase I and Phase II of the project including but not limited to the capacity of DCA to complete the project in a manner which will fit harmoniously into the environment without adverse impacts on the visual characteristics, historic values and unusual natural areas on the Island; and

WHEREAS, DCA desires to avoid the continued opposition of Maine Audubon Society and Island Institute to Phase II of the project as that opposition relates to some non-wastewater related issues.

NOW THEREFORE: In consideration of the mutual covenants and promises set forth in this Agreement, the parties agree as follows:

A. Wastewater Discharge

1. DCA will permanently withdraw its application for an 8,500 g.p.d. increment to its existing Waste Discharge License.

2. DCA will take all necessary steps to amend the draft NPDES permit, dated December 7, 1988, to provide that:

a. The pipe carrying wastewater from the treatment facility shall enter Pleasant Cove at the northerly end of Great Diamond Island and run northeasterly to the approximate center of the Great Diamond Island--Cow Island Channel and the point of discharge, provided that the point of discharge shall not be in less than 10 feet of water at mean low water.

b. The 40,000 g.p.d. flow shall be measured as a weekly average (280,000 gal. per week) rather than a monthly average. It is the intent of this provision to shorten the period of time over which the discharge is averaged. It is not intended that this change result in a reduction in the number of dwelling units and commercial establishments now permitted by the DEP as Phase I.

3. DCA will take all necessary steps to amend its DEP Waste Discharge License to provide that:

- a. The pipe carrying wastewater from the treatment facility shall enter Pleasant Cove at the northerly end of Great Diamond Island and run northeasterly to the approximate center of the Great Diamond Island--Cow Island Channel and the point of discharge, provided that the point of discharge shall not be in less than 10 feet of water at mean low water.
- b. The 40,000 g.p.d. flow shall be measured as a weekly average (280,000 gal. per week) rather than a monthly average. It is the intent of this provision to shorten the period of time over which the discharge is averaged. It is not intended that this change result in a reduction in the number of dwelling units and commercial establishments now permitted by the DEP as Phase I.
- c. The wastewater discharge limitation for fecal coliform bacteria shall be the same "zero fecal coliform" provided for in the NPDES permit.
- d. DCA shall be a guarantor of the Diamond Cove Homeowners' Association capital reserve account for repair, maintenance and reconstruction of the wastewater treatment facility. The dollar amount to be guaranteed in such account shall be as determined by the DEP. DCA's obligations as a guarantor shall extend for a period of 20 years from the date of completion of the wastewater treatment facility.

4. Independent of the Waste Discharge License, DCA shall be a guarantor of the Diamond Cove Homeowners' Association capital reserve account for repair, maintenance and reconstruction of the wastewater treatment facility. The dollar amount to be guaranteed in such account shall be as determined by the DEP. DCA's obligations as a guarantor shall extend for a period of 20 years from the date of completion of the wastewater treatment facility.

5. The total combined flow from Phase I and Phase II of the project shall not exceed 40,000 g.p.d. and DCA will not petition any state or federal agency to increase its wastewater discharge above 40,000 g.p.d. The combined flow from Phase I and Phase II of the project shall not exceed the "zero fecal coliform" level. This Agreement is not intended to limit DCA's rights to mix Phase I and Phase II wastewater provided that government approvals are obtained. Accordingly, DCA reserves



the right to amend its DEP waste discharge license and the NPDES permit, as drafted or as finally issued, to provide for comingling of Phase I and Phase II wastewater.

6. DCA will take all necessary steps to amend its Site Location Order to reflect the change in location of the waste discharge pipe to Pleasant Cove.

7. DCA will take all necessary steps to obtain a submerged lands lease from the Bureau of Public Lands of the Maine Department of Conservation and an Army Corps of Engineers permit for the discharge pipe location at Pleasant Cove.

8. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose final issuance of the draft NPDES permit, dated December 7, 1988, as above amended, and Maine Audubon Society and Conservation Law Foundation will inform EPA that they agree with issuance of the NPDES permit as amended. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose a State of Maine certification, under Section 401 of the Clean Water Act, that the NPDES permit, as above amended, will be in accordance with applicable state laws. Maine Audubon Society, Conservation Law Foundation and Island Institute will not appeal, administratively or to the courts, any aspect of the NPDES permit as above amended or the Section 401 certification.

9. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose the above amendments to the Site Location Order and the Waste Discharge License, and Maine Audubon Society and Conservation Law Foundation will inform DEP that they agree with issuance of the Order and the License as above amended. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose issuance of the Bureau of Public Lands submerged lands lease and the Army Corps of Engineers permit for the relocated waste discharge pipe, and Maine Audubon Society and Conservation Law Foundation will inform the Bureau of Public Lands and the Corps of Engineers that they agree with issuance of the lease and the permit. Maine Audubon Society, Conservation Law Foundation and Island Institute will not appeal, administratively or to the courts, the amendments to the Site Location Order and the Waste Discharge License or issuance of the submerged lands lease or the Corps of Engineers permits.

10. The parties to this Agreement understand that processing by state and federal agencies of the above permits, amendments to permits, and leases may delay DCA's having a complete and finally licensed wastewater treatment facility. The parties also recognize that DCA intends to have a system for disposing of wastewater in place by June 1, 1989. Therefore, if it appears on April 1, 1989 that the necessary

governmental authorizations for the wastewater discharge will not be issued to DCA before June 1, 1989, Maine Audubon Society, Conservation Law Foundation and Island Institute agree not to oppose DCA in obtaining a temporary waiver (intended to last not more than 1 year) from the Maine Department of Human Services for the use of holding tanks. Maine Audubon Society and Conservation Law Foundation will inform the Department of Human Services that they agree with issuance of such a waiver. DCA agrees to use said holding tanks only until such time as it may legally discharge the wastewater.

11. In the event that the state and federal agencies, or any one of them, responsible for issuing the above described permits, amendments to permits and leases decline to do so and, as a consequence, the objectives of this Part A cannot be accomplished, then the obligations of the parties under this entire Agreement shall become null and void.

B. Cooperation in Replication

DCA will cooperate with Maine Audubon Society and Conservation Law Foundation in efforts they undertake to have other wastewater treatment facilities replicate the "zero fecal coliform" discharge system by making available to said organizations engineering and performance data for the DCA wastewater treatment facility.

C. Density

DCA agrees to limit the total number of single family dwellings, including "condominiums" and single family houses (house lots) but not including currently approved commercial and recreational uses, to not more than 173 and agrees to seek an amendment to its Site Location Order to reflect such a limitation. This Agreement is not intended to limit DCA's rights to determine the mix of "condominiums" and single family dwellings (house lots) provided that government approvals are obtained; provided, however, that DCA agrees that no single family dwellings will be constructed on lots 15, 33, 34, 35 and 36 on the Phase II plans on file at the DEP and further agrees to use the more westerly building window on lot 60 on said plans if said lot is developed. DCA agrees to take all necessary steps to obtain an amendment to its Site Location Order to reflect such a limitation and further agrees to place permanent deed restrictions on lots and other land areas which are not finally approved for development by the DEP or a court of competent jurisdiction. DCA agrees that not more than 40 dwelling units will use subsurface waste disposal.

D. Motor Vehicles and Public Access

1. DCA agrees that no motor vehicles of any kind (automobiles, golfcarts, snowmobiles, ATV's etc.) shall pass from the DCA property to the southern part of the Island. The only exceptions shall be fire equipment, ambulances and designated "taxis" (shuttle vans) which might transport persons from the Fort McKinley property to the pier at the southern end of the Island. All construction vehicles, equipment and materials must be landed and off-loaded or loaded on DCA property. To the extent that this condition is not already a part of the Site Location Order--paragraph 11--DCA will seek an amendment to reflect this limitation. Except as above provided, DCA agrees that automobiles will not be operated in the IR-1 or IR-3 zones.

2. DCA agrees that persons owning property on Great Diamond Island may walk to Diamond Cove and around the parade ground area. No access shall be granted until after construction is completed around the parade ground area. Guests of Island property owners shall also have this permission if they are accompanied by Island property owners or if they have been registered in advance by Island property owners. This provision shall be included in the Declaration of Covenants and Restrictions. All persons entering the property shall do so at their own risk and shall sign a release so indicating.

E. Design Review Process

1. DCA agrees that a violation of the Design Review Guidelines shall be a violation of a condition of the Site Location Order.

2. DCA agrees that no variance or waiver of conditions in the Design Review Guidelines shall be final until approved by the DEP. (The parties agree that this shall only be effective if accepted by the DEP.) DCA agrees to work with Maine Audubon Society to draft stringent variance criteria.

3. DCA agrees that the previous two provisions shall become part of the Declaration of Covenants and Restrictions and further agrees that conditions concerning scenic impacts which have been imposed by the City of Portland Planning Board and which may be imposed by the DEP shall also become part of the Declaration of Covenants and Restrictions.

4. DCA agrees to work with Maine Audubon Society to amend the Design Review Guidelines in accordance with certain changes proposed by Holly Dominie in her written comments to Maine Audubon Society dated November 7, 1988.

F. Disclosures

1. DCA agrees to provide prospective purchasers of "condominium" units and single family house lots with copies of the Declaration of Covenants and Restrictions and copies of all local, state and federal licenses. DCA will seek to have such a condition placed in its Site Location Order.

G. Reservation of Rights

The Maine Audubon Society, the Conservation Law Foundation and Island Institute reserve the right to object to and appeal any and all issues that may arise during Site Location Law Phase II consideration by the DEP and BEP that are not expressly dealt with by the covenants in this Agreement.

H. Inteoration; Contract; Authorization

1. This Agreement contains all of the agreement of the parties, and any prior arrangements are hereby terminated and superseded.

2. The terms of this Agreement are contractual and not a mere recital.

3. The signatories hereto represent that they are duly authorized to sign this Agreement.

I. Interpretation and Remedies

The parties agree that the terms of this Agreement shall be interpreted according to Maine law and that an action to enforce this Agreement may be brought in a Maine court of competent jurisdiction.

The parties recognize that this Agreement requires actions with respect to third parties, such as government agencies, the Diamond Cove Homeowners Association and Great Diamond Island residents. The parties also recognize that breach of many of the terms of the Agreement will result in irrevocable harm, harm that is difficult to assess, and/or harm that is difficult to measure financially--this is particularly true with respect to environmental harm. Thus, the parties agree that in most instances specific performance is the appropriate remedy for any breach of this Agreement.

In some instances, however, specific performance may not be adequate to fully remedy the harm created by a breach. In this situation, in addition to the remedy of specific performance, a party harmed by the breach may seek other legal and equitable remedies.

If specific performance will not in any way remedy harm created by a breach, the parties agree that specific performance is not the appropriate remedy for breach. In this situation, the parties agree that a party harmed by the breach may seek other legal and equitable remedies.

The parties also agree that the breaching party will not challenge specific performance as a remedy for the breach, unless specific performance will in no way remedy the harm caused by the breach.

J. Confidentiality

The parties to this Agreement agree that the contents of this Agreement may be made public once it is signed.

K. Binding on Successors

This Agreement is binding on the successors in interest and assigns of the parties.

IN WITNESS WHEREOF, the undersigned have set their hands this 24<sup>th</sup> day of March, 1989.

DIAMOND COVE ASSOCIATES

By: David Bateman  
David Bateman, Partner

MAINE AUDUBON SOCIETY

By: Karin K. Tilberg  
Karin Tilberg, Esq.  
Attorney

CONSERVATION LAW FOUNDATION

By: Richard S. Earnest  
Attorney

ISLAND INSTITUTE

By: Philip Conkling  
Philip Conkling  
Executive Director

## AMENDMENTS TO AGREEMENT

The Agreement, dated March 2, 1989, by and between Diamond Cove Associates, Maine Audubon Society, Conservation Law Foundation and Island Institute is amended as follows:

P.1 ¶ 2: WHEREAS, Diamond Cove Associates (hereinafter "DCA") has proposed a residential and commercial development on approximately 198 acres of the property which it owns on the northerly portion of Great Diamond Island, Portland, Maine; said development consisting of 134 "condominium" units and 5 commercial and 2 recreational buildings (said "condominium" units, commercial and recreational buildings being Phase I of the project) and 70 single family house lots (said house lots being Phase II of the project); and

P.1 ¶ 9: WHEREAS, Maine Audubon Society, Conservation Law Foundation and Island Institute are concerned about the environmental impacts of the wastewater discharge from both Phase I and Phase II of the project and have opposed issuance of the NPDES permit, as drafted, as well as the 8,500 g.p.d. or any other increment to the Waste Discharge License; and

P.3 ¶ 3 c: The wastewater discharge limitation for fecal coliform bacteria shall be the same "zero fecal coliform" provided for in the December 7, 1988 draft NPDES permit.

P.3 ¶ d 2nd sent.: The dollar amount to be guaranteed in such account shall be sufficient to cover the repair, maintenance and reconstruction costs of the wastewater treatment facility adjusted for inflation as determined by the DEP.

P.4 ¶ 10: The parties to this Agreement understand that processing by state and federal agencies of the above permits, amendments to permits, and leases may delay DCA's having a complete and finally licensed wastewater treatment facility. DCA has stated that it needs a wastewater disposal system in place by June 1, 1989. Maine Audubon Society, Conservation Law Foundation and Island Institute agree not to oppose DCA in obtaining a temporary waiver from the Maine Department of Human Services for the use of holding tanks (such waiver to last not more than 1 year from its issuance, or until such time as it may legally discharge the wastewater, whichever is shorter). Maine Audubon Society and Conservation Law Foundation will inform the Department of Human Services that they agree with issuance of such a waiver.

P.5 ¶ 11: In the event that the 5 state and federal agencies (DEP, DHS, BPL, EPA and ACE mentioned above), or any one of them, responsible for issuing the above described permits, amendments to permits and leases decline to do so and, as a consequence, the permits of this Part A cannot be obtained,

then the obligations of the parties under this entire Agreement shall be null and void.

P.5 ¶ C. Density

DCA agrees to limit permanently the total number of single family dwellings, including "condominiums" and single family houses (house lots) but not including the currently approved 5 commercial and 2 recreational uses, to not more than 173 on the entire 198 acre DCA property. DCA shall take all necessary steps to amend to its Site Location Order and its Phase II Site Location application to reflect such a limitation; pending approval of such an amendment, DCA will abide by the limitation herein. This Agreement is not intended to limit DCA's rights to determine the mix of "condominiums" and single family dwellings (house lots) provided that government approvals are obtained; provided, however, that DCA agrees that no single family dwellings will be constructed on lots 15, 33, 34, 35 and 36 on the Phase II plans on file at the DEP and further agrees to use the more westerly building window on lot 60 on said plans if said lot is developed. DCA agrees to take all necessary steps to amend its Phase II Site Location application to reflect such a limitation and further agrees to place permanent deed restrictions on lots and other land areas which are not finally approved for development by the DEP or a court of competent jurisdiction. DCA agrees that not more than 40 dwelling units will use subsurface waste disposal.

P.6 ¶ D sub. ¶ 1. Motor Vehicles and Public Access

1. DCA agrees that no motor vehicles of any kind (automobiles, golfcarts, snowmobiles, ATV's etc.) shall pass from the DCA property to the southern part of the Island. The only exceptions shall be fire equipment, ambulances, public safety vehicles and designated "taxis" (shuttle vans) which might transport persons from the Fort McKinley property to the pier at the southern end of the Island. All construction vehicles, equipment and materials must be landed and off-loaded or loaded on DCA property. To the extent that this condition is not already a part of the Site Location Order--paragraph 11--DCA will take all necessary steps to amend the Order to reflect this limitation. Except as above provided, DCA agrees that automobiles will not be operated in the IR-1 or IR-3 zones. This provision shall become part of the Declaration of Covenants and Restrictions.

DEP set

P.7 ¶ G. Reservation of Rights

The Maine Audubon Society, the Conservation Law Foundation and Island Institute reserve the right to object to and appeal

any and all issues that may arise during Phase II consideration by the DEP, BEP or other agencies that are not expressly agreed to in the covenants of this agreement.

IN WITNESS WHEREOF, the undersigned have set their hands on the dates below indicated.

3/10/89  
By: [Signature]  
DIAMOND COVE ASSOCIATES  
Richard Dobson, Partner

MAINE AUDUBON SOCIETY  
By: [Signature]  
Karin Tilberg, Esq.  
Attorney

CONSERVATION LAW FOUNDATION  
By: \_\_\_\_\_  
Attorney

March 9, 1989  
By: [Signature]  
ISLAND INSTITUTE  
Philip Conkling  
Director



Ronald N. Ward

(207) 772-1941

rnward@dwmlaw.com

(207) 772-3627 Fax

(800) 727-1941

245 Commercial Street

www.dwmlaw.com

Post Office Box 9781

Portland, ME 04104-5081

ADMITTED IN ME ONLY

MEMORANDUM

- Daniel Amory\*
- Harry R. Pringle\*
- Richard A. Spencer\*
- Gerald M. Zelin\*
- Ronald N. Ward\*
- David J. Backer\*
- John S. Kaminski\*
- William L. Plouffe\*
- Jerrold A. Crouter\*
- Michael E. High\*
- Richard A. Shinay\*
- Bruce W. Smith\*
- Gary D. Vogel\*
- E. William Stockmeyer\*
- Benjamin E. Marcus\*
- Melissa A. Hewey†
- Eric R. Herian††
- Jeanne M. Kincaid††
- Gregory W. Sample\*
- Daniel J. Rose††
- Keighn Smith, Jr.\*
- Daine J. Nathanson\*
- Edward J. Kelleher\*
- S. Campbell Badger\*
- Melissa L. Cibley◊
- Amy K. Tchao††
- David S. Sherman, Jr.\*
- Robert P. Nadeau\*
- Stephen C. Jordan††
- Catherine D. Alexander\*
- Brian D. Willing\*
- John Lisnik, Jr.\*†
- Aaron W. Pratt††
- James C. Schwollenbach††
- Elizabeth D. McEvoy\*
- Jeffrey T. Piampiano\*
- Peter C. Feimly\*
- Jessica M. Emmons\*
- Jonathan M. Goodman\*
- Mike K. Reynolds\*
- Abigail Greene Goldman\*
- Amy J. Visentis\*
- Sara S. Hellstedt\*

TO: City of Portland Planning Department  
 FROM: Ronald N. Ward  
 RE: Ft. McKinley Settlement Agreement dated April 12, 1991  
 DATE: April 29, 2008

At the initial workshop session on April 22, 2008, references were made to an agreement entered into between the developer and the various opposition environmental groups. The inference of one of those comments was that the environmental groups reserved some jurisdiction over the current Project which is located entirely within Phase I of the Ft. McKinley Project. You have asked that we respond to this theory.

Enclosed is a copy of the Agreement entered into between the developer (Diamond Cove Associates) and Maine Audubon Society, Casco Bay Island Development Association and Island Institute. This Agreement was entered into to settle on-going litigation involving Phase II of the Project, comprised primarily of single family lots. As of the date of the Agreement, Phase I of the Project had been fully permitted and was well into construction. David Bateman was personally involved in all of the negotiations.

As you will note from the Agreement itself, there is no suggestion that this settlement agreement was intended to affect anything other than the subject matter of the litigation, i.e., Phase II. To the extent that the environmental groups now reference some control over "open space and recreation areas", that is limited to the designated areas appearing on the Phase II plan recorded in Plan Book 191, Page 143. That plan does not include the current Project.

Consultants

Roger P. Kelley  
 Labor Relations &  
 Conflict Management

Ann S. Chapman  
 Policy & Labor Relations

Christopher P. O'Neil  
 Governmental Affairs

Michael J. Dpude Ph.D.  
 Special Education

Of Counsel

Harold E. Woodsum, Jr.\*  
 Hugh G. E. MacMahon\*  
 Joseph L. Delefield III\*  
 Robert L. Gips\*  
 Donald A. Kopp\*

\* Admitted In Maine  
 † Admitted In New Hampshire  
 ◊ Admitted In Missouri

RNW:kjl  
 Enclosure

1-1-2

AGREEMENT

This Agreement is entered into this 12th day of April, 1991 by and between Diamond Cove Associates, of Portland, Maine; Maine Audubon Society, of Falmouth, Maine; Casco Bay Island Development Association of Portland, Maine; and Island Institute, of Rockland, Maine.

WHEREAS, Diamond Cove Associates (hereinafter "DCA") has proposed a residential subdivision for property which it owns on the northerly portion of Great Diamond Island, Portland, Maine; said development consisting of single family house lots (said house lots being Phase II of the project), the number of said house lots being 39 under a January 22, 1991 Site Location of Development Application; and

WHEREAS, DCA received Site Location of Development Law approval (hereinafter "Site Location Order") for Phase I of the project from the Maine Department of Environmental Protection (hereinafter "DEP") on December 10, 1986; said Phase I consisting of "townhouse" commercial and residential uses; and

WHEREAS, DCA applied on July 27, 1987 to the DEP for approval of a 70 lot subdivision project under the Site Location of Development Law and said application was denied on December 13, 1989; and

WHEREAS, DCA has appealed the denial of its application to the Maine Supreme Judicial Court, which appeal is still pending; and

WHEREAS, Maine Audubon Society, Casco Bay Island Development Association, and Island Institute are concerned about the adverse impacts on the visual characteristics, historic values, and the unusual natural areas of Casco Bay and Great Diamond Island associated with Phase II of the project; and

WHEREAS, Maine Audubon Society, Casco Bay Island Development Association, and Island Institute wish to ensure that DCA will complete Phase II in a manner which will fit harmoniously into the environment and without unreasonable adverse impacts on the visual characteristics, historic values and unusual natural areas on the Island; and

WHEREAS, DCA desires to avoid the continued opposition of Maine Audubon Society, Casco Bay Island Development Association and Island Institute to the construction of Phase II as proposed in January, 1991; and

WHEREAS, all parties wish to avoid unnecessary litigation, including the now pending appeal of the December 13, 1989 denial; and

WHEREAS, Maine Audubon Society, Casco Bay Island Development Association and Island Institute wish to provide for a mechanism under which they can monitor compliance with the covenants and restrictions which are intended to retain the visual characteristics, historic values and unusual natural areas on the Island;

NOW THEREFORE: In consideration of the mutual covenants and promises set forth in this Agreement, the parties agree as follows with respect to the January 22, 1991 Phase II application as amended by this Agreement:

A. Appeal and New Application:

1. DCA will withdraw its pending appeal of the denial of its July 27, 1987 Site Location of Development Application upon execution of this Agreement.

2. Maine Audubon Society, Island Institute and Casco Bay Island Development Association will not in any way oppose or express any reservation about DCA's Phase II application of January 22, 1991, as amended by this Agreement. The obligation of this paragraph shall be broadly construed and includes, without limitation, communications to governmental officials and agencies and to the press, and further applies not only to the organizations identified but also to employees and members of such organizations, acting in their corporate capacities, who participated in negotiating this Agreement.

Maine Audubon Society, Island Institute and Casco Bay Island Development Association and those individuals previously mentioned shall not request a reconsideration of DEP approval of the January 22, 1991 Phase II application as amended by this Agreement and shall not appeal to the courts the DEP approval of the January 22, 1991 Phase II application as amended by this Agreement.

3. In the event DCA makes any changes to its January 22, 1991 Phase II application as amended by this agreement the parties agree that the rights of Maine Audubon Society, Island Institute and Casco Bay Island Development Association to oppose the application are restored without limitation.

4. DCA agrees not to amend its January 22, 1991 Phase II application by adding any proposed lots beyond those contained in the existing application on file.

5. DCA agrees to provide notice of any and all additional DEP or other, State, Municipal or Federal regulatory filings or amendments to Maine Audubon Society, Island Institute and Casco Bay Island Development Association.

B. Design Review Process:

1-I-4

1. DCA agrees that a violation of the Covenants and Restrictions or the Design Review Guidelines shall be a violation of any Site Location of Development Law approval, whether conditional or unconditional, issued by the DEP for Phase II as proposed in DCA's January 22, 1991 application.

2. DCA agrees that provision B.1 of this Agreement shall become part of the Declaration of Covenants and Restrictions and further agrees that conditions concerning scenic impacts which may be imposed by the DEP shall also become part of the Declaration of Covenants and Restrictions.

3. DCA agrees to amend the Design Review Guidelines and the Declaration of Covenants and Restrictions submitted as part of its January 22, 1991 application as shown on the attached revised Guidelines and Covenants.

C. Gun Batteries:

1. DCA agrees that gun batteries Farry, Berry, Weymouth and Carpenter shall be subject to the terms of the Memorandum of Agreement by and between the Advisory Committee on Historic Preservation, the U.S. Environmental Protection Agency and the State Historic Preservation Office dated May 23, 1989 and further agrees that such gun batteries shall be made subject to a restrictive covenant running to the Homeowners Association which prohibits all building upon or physically altering such gun batteries. The Homeowners Association may not release or amend such covenants.

D. Amended Declaration of Covenants and Restrictions; Open Space:

1. All areas shown as open space recreation within Phase II on the plans accompanying the January 22, 1991 application will remain as open space and will not be divided or built upon or otherwise altered from their natural character in the future. Such restrictions on future use of these areas shall be placed in the Declaration of Covenants and Restrictions and with a provision that they not be amended or deleted, without the consent of all Phase II lot owners, Maine Audubon Society, Casco Bay Island Development Association and the Island Institute.

2. The Declaration of Covenants and Restrictions for Diamond Cove, recorded in the Cumberland County Registry of Deeds in Book 8930, Page 243, shall be completely amended by the preparation and recordation of an amended and restated Declaration covering Phase I and Phase II. The amended Declaration shall provide Maine Audubon Society, Casco Bay Island Development Association and Island Institute a limited right to enter upon the common areas of the project upon reasonable notice periodically each year to ensure that there have been no

violations of the covenants and restrictions contained in the amended Declaration which are intended to protect and preserve the visual characteristics, historic values and unusual natural areas of the Diamond Cove project. The amended Declaration shall be in form and substance satisfactory to counsel for Maine Audubon Society, Casco Bay Island Development Association and the Island Institute.

3. Maine Audubon Society, Casco Bay Island Development Association and Island Institute, their successors and assigns shall have the right to enforce and continue to enforce the terms and provisions of this Agreement and of the amended and restated Declaration of Covenants and Restrictions and Design Review Guidelines which are intended to protect and preserve the visual characteristics, historic values, including gun batteries, open space and unusual natural areas of the Diamond Cove project against DCA and its successors and assigns including without limitation the lot owners in Phase II and the Diamond Cove Homeowners Association. Notice of this right of enforcement shall be incorporated into the amended Declaration. The right of enforcement shall run with the land and be binding upon all subsequent owners of the Phase II lots and the common areas.

E. Contract: Authorization:

- 1. The terms of this Agreement are contractual and not a mere recital.
- 2. The signatories hereto represent that they are duly authorized to sign this Agreement.

F. Interpretation and Remedies:

The parties agree that the terms of this Agreement shall be interpreted according to Maine law and that an action to enforce this Agreement and the Declaration of Covenants and Restrictions as well as the Design Review Guidelines (as may be amended from time to time) may be brought in a Maine court of competent jurisdiction by the parties.

The parties recognize that this Agreement, and the Covenants and Guidelines require actions with respect to third parties, such as government agencies, the Diamond Cove Homeowners Association, and Great Diamond Island residents. The parties also recognize that breach of many of the terms of the Agreement, Covenants and Guidelines will result in irrevocable harm, harm that is difficult to assess, and/or harm that is difficult to measure financially--this is particularly true with respect to environmental harm. Thus, the parties agree that in most instances specific performance is the appropriate remedy for any breach of this Agreement or the Covenants and Guidelines.

In some instances, however, specific performance may not be adequate to fully remedy the harm created by a breach. In this

situation, in addition to the remedy of specific performance, a party harmed by the breach may seek other legal and equitable remedies.

If specific performance will not in any way remedy harm created by a breach, the parties agree that specific performance is not the appropriate remedy for breach. In this situation, the parties agree that a party harmed by the breach may seek other legal and equitable remedies.

The parties also agree that the breaching party will not challenge specific performance as a remedy for the breach, unless specific performance will in no way remedy the harm caused by the breach.

G. Confidentiality:

The parties to this Agreement agree that the contents of this Agreement may be made public once it is signed and intend that a copy of this Agreement be forwarded to the Maine DEP upon execution.

H. Binding on Successors:

This Agreement is binding on the successors in interest and assigns of the parties.

I. Consents:

DCA shall obtain the consent of its mortgagees and ground lessors of record to the amended Declaration and shall cause such mortgagees and ground lessors, if any, to each enter into a form of consent or joinder agreement to the amended Declaration acceptable to counsel for Island Institute under which such mortgagees or ground lessors agree to be subject to the terms of the amended Declaration.

J. Further Actions and Assurances:

DCA, Maine Audubon Society, Casco Bay Island Development Association and Island Institute agree to each proceed in good faith using their best efforts to accomplish the matters contemplated hereby, including, without limitation, to draft and agree upon a revised set of Design Review Guidelines and an amended and restated Declaration of Covenants and Restrictions which accomplish the matters addressed herein to the satisfaction of counsel for each of the parties hereto. DCA agrees to use its best efforts to obtain the consents of its mortgagees and ground lessors and of any and all owners of lots within the project to the amended and restated Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF, the undersigned have set their hands.

DATED: April 9, 1991

DIAMOND COVE ASSOCIATES

BY: William L. Plouffe  
WILLIAM L. PLOUFFE, ATTORNEY

DATED: April 12, 1991

MAINE AUDUBON SOCIETY

BY: Elizabeth L. Lovejoy  
ELIZABETH L. LOVEJOY, ATTORNEY

DATED: April 12, 1991

ISLAND INSTITUTE & CASCO BAY  
ISLAND DEVELOPMENT ASSOCIATION

BY: Jeffrey A. Thaler  
JEFFREY A. THALER, ATTORNEY

DAA0041C



1-5

PORTLAND HARBOR HOTEL  
*Old Port District*

April 29, 2008

Inn at Diamond Cove, LLC  
PO Box 3572  
Portland, ME 04104

Re: Mainland Parking Facilities for  
the Proposed Inn at Diamond Cove

Gentlemen:

The Portland Harbor Hotel, acting as the Manager for the proposed Inn at Diamond Cove, will provide mainland parking for the island guests. The Portland Harbor Hotel currently has adequate excess parking available through both its on and off site parking leases.

Sincerely,

Gerard Kiladjian  
General Manager







**Rick Knowland - FW: Diamond Cove**

**From:** Ronald Ward <rw@dwmlaw.com>  
**To:** 'Rick Knowland' <RWK@portlandmaine.gov>  
**Date:** 4/29/2008 1:47 PM  
**Subject:** FW: Diamond Cove  
**CC:** 'Nathan Bateman' <nathan@batemanpartnersllc.com>, David Bateman <david@batemanpartnersllc.com>

Rick- attached is pdf from the architect showing the actual layout of the individual condo units, totaling 20 in all. 6 are 1 bedroom, 6 2 bedroom and 8 are 3 bedroom units. We'll answer your specific question in a separate memo.

The response to your 15 point memo of 4/23 is in processing and assembly of enclosures now.

Ronald N. Ward, Esq.  
Drummond Woodsum & MacMahon  
PO Box 9781  
245 Commercial Street  
Portland, ME 04104

207-772-1941  
207-772-3627 (fax)  
rward@dwmlaw.com

**CONFIDENTIALITY NOTICE:** This email message is confidential and is subject to the attorney-client privilege and to every other applicable privilege. If you are not the intended recipient, please reply to the sender that this message was misdirected, delete this message and do not retain any copies. The sender and the intended recipient do not waive any privilege by reason of any inadvertent misdelivery of this message.

**IRS CIRCULAR 230 DISCLOSURE:** To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding tax-related penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any tax-related matter(s) addressed herein.

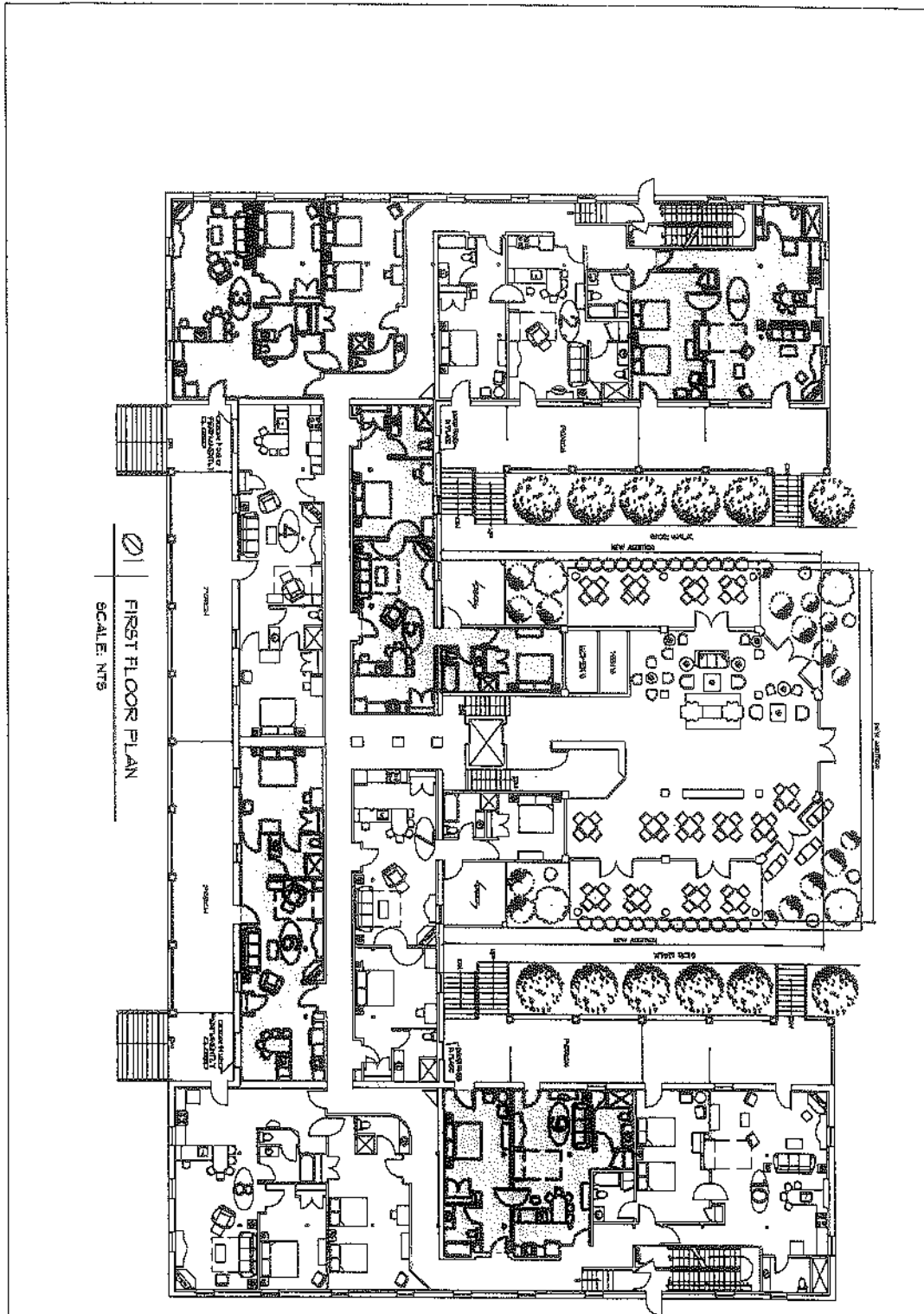
**From:** Nathan Bateman [mailto:nathan@batemanpartnersllc.com]  
**Sent:** Tuesday, April 29, 2008 11:25 AM  
**To:** Ronald Ward  
**Subject:** FW: Diamond Cove

Nathan Bateman  
Bateman Partners, LLC  
245 Commercial Street  
Portland, ME 04101  
Tel: 207-772-2992  
Fax: 207-772-1881

[nathan@batemanpartnersllc.com](mailto:nathan@batemanpartnersllc.com)

**From:** David Hickman [mailto:hickman@archetypepa.com]

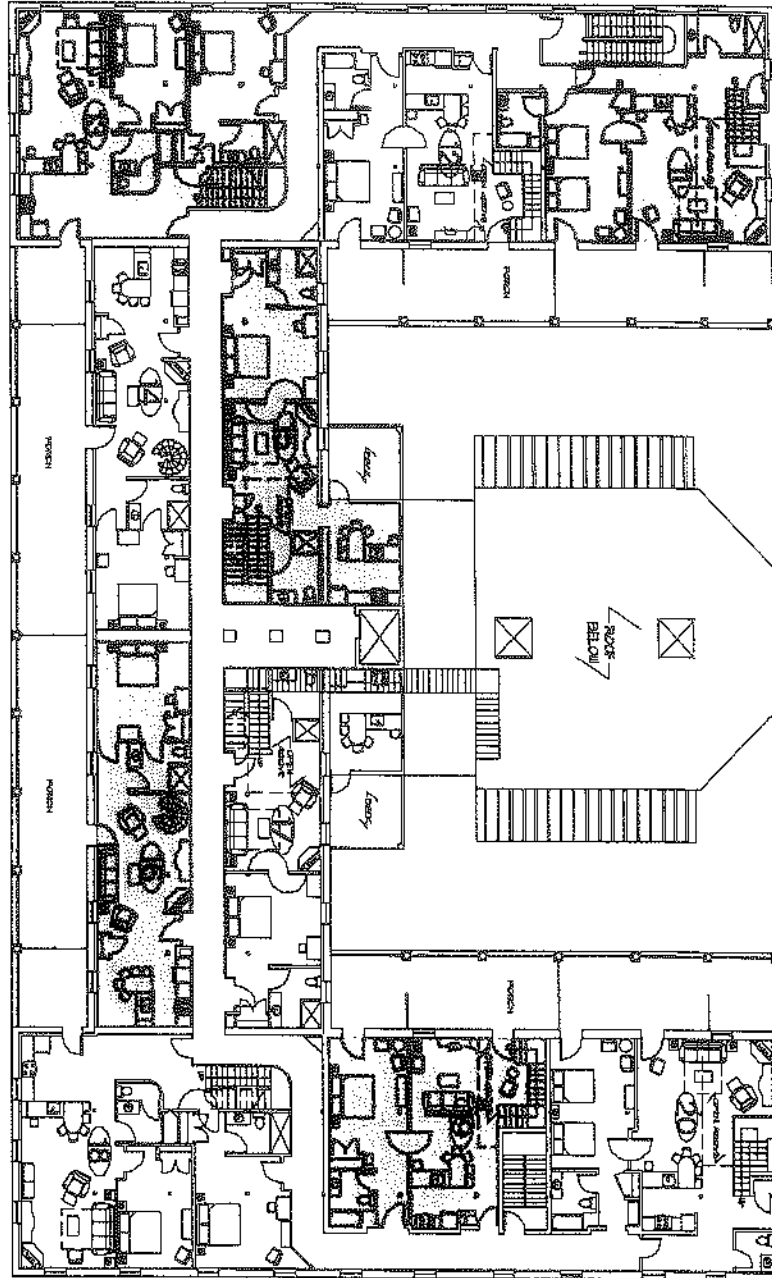
1-1-2



9  
10  
11  
12  
13  
14  
15

A01	DATE: APR 24, 2004	SCALE: NOT TO SCALE	PROJECT: 1150 IONIC HARBOUR COVE, LLC	ARCHITECT: ARCHETYPE, P.A. ARCHITECTS	REVISIONS:
	PROPOSED PLANS		PROJECT: 1150 IONIC HARBOUR COVE, LLC	ARCHITECT: ARCHETYPE, P.A. ARCHITECTS	DESIGNED BY: HARRIS, HARRIS & HARRIS

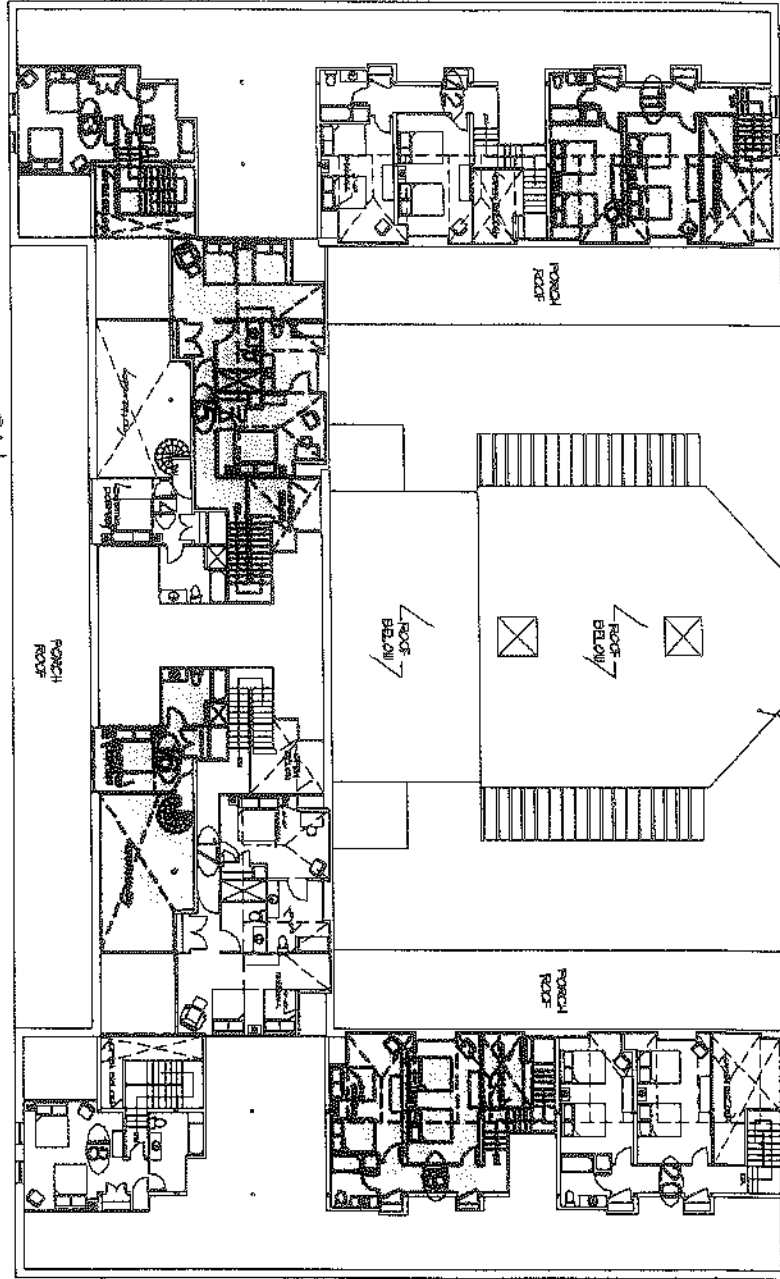
1-6-3



SECOND FLOOR PLAN  
SCALE: NTS

A02	DATE: 11/14/02	SCALE: AS SHOWN	PROJECT: 150 1st St Diamond Cove, LLC	ARCHITECT: ARCHETYPE, P.A. ARCHITECTS 1000 1st St, Diamond Cove, LLC 270-770-0022	OWNER: Diamond Cove, LLC
	PROPOSED PLANS		DESIGNED BY: Rick Knowland		

1-2-4



01 THIRD FLOOR PLAN  
SCALE: NTS

A03	DATE: 10/24/01	BY: RKN	SCALE: AS SHOWN	PROJECT: The Inn at Diamond Cove, LLC	ARCHITYPE, P.A. ARCHITECTS	DESIGNED BY: RKN
	PROPOSED PLANS			DATE: ME	16 Littleton Street, Suite 200, Littleton, CO 80120 303.726.4500	1000 West 14th Street, Suite 100, Denver, CO 80202

Bateman Partners, LLC was created specifically to develop and manage real estate, which the principals have done since 1979. The principles have developed projects in southern Maine in excess of 100 million dollars from 1979 through 2008. Many of these projects Bateman Partners, LLC and or its principals still own and or manage.

The Principals of Bateman Partners, LLC initially developed both elderly and family subsidized housing in conjunction with the New Hampshire and Maine state housing authorities. The focus of development eventually spread to market rate housing and commercial office buildings as the city of Portland grew throughout the 1980's. Recreational developments which included the Falmouth Country Club and its adjacent residential subdivision as well as Diamond Cove, a 193-acre island resort community.

Most recently Bateman Partners, LLC has acted as both the development consultant and partners in the Tidewater Farm and Village project in Falmouth Maine. This project consist of 85 acres of land which was rezoned to allow the construction of 50 single family homes, 22 residential condominiums, 65,000 sq' of commercial office space and a 75 room Inn. At this point in time this development is 50% built out with another 2 years left in construction. The Principals of Bateman Partners are David Bateman, Nathan Bateman, and Aaron Bateman.

**David Bateman** is the president of Bateman Partners, LLC. Mr. Bateman is a trained architect with extensive experience in the field of design and construction. Mr. Bateman is responsible for all day-to-day management of the Bateman Partners, LLC entities and their assets

Mr. Bateman has extensive experience in the following specific areas:

- Feasibility and market analysis
- Project design and master planning
- Local, State and federal approvals and permitting
- Project financing
- Equity syndication
- Contract negotiation
- Construction supervision and estimating
- Project management
- Sales and Marketing

Since 1979 Mr. Bateman has been responsible for the acquisition, development, and management of real estate projects with a combined development cost in excess of One Hundred million dollars.

Mr. Bateman's personal goal has been to provide Maine with innovative projects, which improve the quality of life for its residents. Whether it be pioneering the concept of "scattered site" family housing, (a method which blends subsidized housing into existing

neighborhoods), creating Maine's first elderly congregate care facility, or through traditional commercial and resort developments, the basic commitment to quality of life has never been compromised.

**Nathan Bateman** is the Vice President of Bateman Partners, LLC. Nathan holds a degree in Finance and Entrepreneurial studies from Babson College. Nathan assists David Bateman in all day-to-day management of the Bateman Partners, LLC entities and their assets. Nathan responsibilities also include creating feasibility studies for potential projects, obtaining local and state approvals, securing financing and overall all project management.

**Aaron Bateman** is the Treasure of Bateman Partner, LLC. Aaron holds a degree in Finance from Babson College and maintains a successful property management company in Saco, Maine.

### **REAL ESTATE PROJECTS DEVELOPED BY DAVID BATEMAN AND BATEMAN PARTNERS, LLC**

<b>Subsidized Housing Projects</b>	<b>Development Costs</b>
- Summer Street / 32 units of elderly and family housing Located in Biddeford, Maine	1.40 M
- Presidential Housing / 45 units of elderly housing Located in Biddeford, Maine	2.00 M
- Central Block / 24 units of elderly housing Located in Farmington, New Hampshire	1.10 M
- Bethel Housing / 20 units of elderly housing Located in Bethel, Maine	.98 M
- Pleasant Street / 45 units of elderly and family housing Located in Saco, Maine	2.40 M
- Lincoln Street / 21 units of scattered site family housing Located in Saco, Maine	1.60 M
- Pierson Lane / 68 units of scattered site family housing Located in Biddeford, Maine	4.90 M
- Front Street / 36 units of elderly housing Located in Sanford, Maine	1.90 M
- Falls I / 61 units of family housing Located in Saco, Maine (moderate income)	3.40 M
	<b>19.68M</b>
<b>Commercial Projects</b>	
- Marineast Complex / 87 market rate rental town homes 10,000 sq.ft. Commercial building South Portland, Maine	6.00 M
- Safford House / historic rehabilitation 9,000 sq.ft. commercial office building Portland, Maine	.83 M
- Harbor Plaza / 60,000 sq.ft. commercial office building and 200 car parking facility Portland, Maine	7.50 M

- Lowell St. Medical Building / 30,000 sq.ft. medical building with offices and ambulatory clinic facility Portland, Maine	1.80 M
- Ocean View Retirement Complex / 70 unit congregate care facility Falmouth, Maine (Phase I)	4.50 M
- Bay View Apartments / 71 unit market rate rental complex Portland, Maine	2.40 M
- Falmouth Country Club / 18 hole championship golf course and related private club facilities Falmouth, Maine	4.73 M
- Falmouth on the Green Subdivision / 122 lot residential subdivision encompassing 450 acres, which surround the Falmouth Country Club Falmouth, Maine	5.70 M
- Diamond Cove McKinley Estates / 197 acre resort development Located on Great Diamond Island Portland, Maine	16.00 M
- Cummings Mill / 48 Luxury Apartments Located in the historic Cummings Mill, South Berwick, Maine	5.6 M
- Portland Harbor Hotel / 100 room boutique Hotel located in the "Old Port" Commercial Area of Portland, Maine	13.00 M
- OHM Properties, LLC 6,000 sq' medical office building Located in Falmouth, ME	1.5 M
	69.56 M

**Project Currently Under Development / Construction**

- Tidewater Farm / 50 lot subdivision and 75 room inn Located in Falmouth, ME	6.00 M
- Tidewater Village / Road and Utility upgrades to support 4 Commercial building pad sites in Falmouth, ME	2.00 M
- TV#2 / 20,000 sq' building consisting of 7 residential condos and 4 commercial condominiums	4.2M
- CCCEA Multipurpose Learning Facility / 6,000 sq' of office space For the University of Maine and Cumberland County Cooperative Extension Located in Falmouth, ME	1.6 M
- 468 Fore Street / 16,000 sq' of office, retail and hotel facility. This facility supports the existing Portland Harbor Hotel Located in Portland, ME	5.7 M
- The Inn at Diamond Cove / 20 unit Condo Hotel Located on Great Diamond Island, Portland ME	6.5M
	26 M





DELUCA-HOFFMAN ASSOCIATES, INC.  
CONSULTING ENGINEERS

778 MAIN STREET  
SUITE 8  
SOUTH PORTLAND, MAINE 04106  
TEL. 207 775 1121  
FAX 207 879 0896

1-N-1

- D. SITE PLANNING AND DESIGN
- E. ROADWAY DESIGN
- F. ENVIRONMENTAL ENGINEERING
- G. PERMITTING
- H. AIRPORT ENGINEERING
- I. CONSTRUCTION ADMINISTRATION
- J. LANDSCAPE ARCHITECTURE

May 22, 2008

Ms. Richard Knowland, Senior Planner  
Department of Planning and Development  
City of Portland  
389 Congress Street  
Portland, ME 04101

**Subject: The Inn at Diamond Cove, LLC  
Conditional Zoning Amendment  
Diamond Cove, Great Diamond Island  
Response to your comment concerning Wastewater Capacity dated 5-20-08**

Dear Mr. Knowland:

On behalf of The Inn at Diamond Cove LLC, our office has prepared response to your email comments concerning the available wastewater capacity for the project. A summary of the comment and our response is provided below:

*Comment: Wastewater treatment...The infiltration issue hasn't been addressed. There have been apparently minimal discussions between the development team and Michael Demarest of the DEP concerning this subject. I've talked with Michael several times over the last couple of weeks including as late as today. The wastewater flow rates are recorded on a daily basis so if pipes were upgraded as mentioned by David at the public hearing this should be a relatively easy exercise to address. If infiltration remains an issue then how does the developer intend to address it? Fix the pipes? Put the double barracks building on a separate system design? I'm sure there is a solution but it hasn't been identified yet. We don't necessarily need all the details of the solution but we need to have a solution identified.*

Response:

At this point, there has not been a formal submission to the MeDEP for the proposed Inn at Diamond Cove. There have been several discussions with various staff members at the MeDEP concerning this project since August of last year. In preparation of a permit application to amend the Site Location of Development Permit with the MeDEP, the applicant has requested a Pre-Application Meeting with MeDEP to discuss the proposed renovation of the "Double Barracks" building as well as the future renovation plans for the hospital building. It is our understanding that Michael Demarest will be in attendance at the Pre-Application Meeting. Obviously, the wastewater capacity of the existing OBD system is an important issue for this project.

As currently stated, the current wastewater treatment system consists of a gravity sewer collection system that conveys sanitary sewer flows to three sand filter beds for treatment prior to overboard discharge to Casco Bay. The wastewater treatment system is licensed by the MeDEP (Permit #W006931-41-A-N) to accept and treat 35,000 gallons per day based upon a monthly average.

The existing uses on the island are estimated to generate 29,335 gpd of wastewater, which results in 5,665 gpd of reserve capacity that is available for the renovations of the "Double Barracks" and Hospital buildings as well as any sources of inflow/infiltration.

Mr. Richard Knowland  
May 22, 2008  
Page 2

As part of the original development of the Diamond Cove project, the developer's replaced and lined significant portions of the sewer system in order to reduce the amount of illicit flow (infiltration and inflow) into the existing sewer system. Upon completion of this work, the existing sewer system still experienced excessive amounts of illicit inflow. As a result, the developer's continued to make improvements to the system to further remove sources of illicit inflow, which included eliminating several building roof drains, building foundation drains, etc.

Prior to 2006, the developer's performed a relatively extensive evaluation of the sewer collection system in an effort to identify and isolate the source of the remaining illicit inflow to the system and determine the collection system was not the primary source of illicit inflow, but rather from the filter beds themselves. Specifically, the surface area over the existing sand filters was not graded to promote sheet flow of rainwater or snow melt away from the fields. In addition, the surface material over the sand filters did not include at least 6 to 8 inches of loam to further reduce infiltration of stormwater into the system. In actuality, rainwater or snow melt water ponding over the beds resulted in excessive quantities of infiltration into the system.

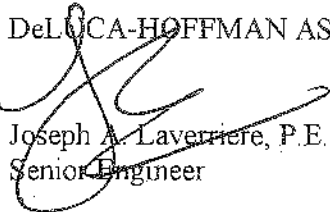
In 2006 the developer's performed a relatively extensive reconstruction on the sand filter beds to correct settlement of the surface material over the beds. The surface over the beds were reconstructed with approximately 12-inches of loam thickness and graded (raised) to promote surface drainage away from the fields. Since these modifications were performed to the filter beds, the rate of flow through the system has been reduced significantly as measured by the effluent flow meter and shown on the daily flow reports submitted to the DEP. Based upon these daily flow records, the sewer system's average monthly flow rate since 2006 has consistently been below the 35,000 gpd limitation contained in the Waste Discharge Permit.

A comprehensive review of the daily flow data records and system wide improvements will be provided as part of the upcoming permit process with the MeDEP. Based upon a review of the wastewater treatment system flow records since 2006, it is the applicant's opinion that there has been considerable efforts made to reduce illicit inflow throughout the sewer collection system and that the existing wastewater treatment system has sufficient capacity to accommodate the projected flows associated with the planned renovation of the "Double Barracks" as well as provide sufficient reserve capacity for the future renovation of the "Hospital".

Please contact our office with any questions you may have concerning this letter.

Sincerely,

DeLUCA-HOFFMAN ASSOCIATES, INC.



Joseph A. Laverriere, P.E.  
Senior Engineer

JAL/sq/JN2769/Knowland-5-22-08

C: David Bateman - The Inn at Diamond Cove, LLC



TD Banknorth, N.A.  
One Portland Square  
P.O. Box 9540  
Portland, ME 04112-9540  
T: 207 761-8500  
Toll Free: 800 462-3666  
TDBanknorth.com

April 29, 2008

Mr. Richard Knowland  
Planning Division  
City of Portland  
389 Congress Street  
Portland, ME 04101

Re: The Inn at Diamond Cove, LLC

Dear Mr. Knowland:

TD Banknorth, N.A. has reviewed preliminary financial and project information on the development to be known as The Inn at Diamond Cove.

TD Banknorth, N.A. has not issued a commitment to provide construction financing for this project. The bank would welcome the opportunity to discuss the possibility of financing the project with the project owners at some point in the future.

If you need any additional information, please call.

Sincerely,

David A. Bronson  
Senior Vice President

**SUPPLEMENTAL CONDITIONS AND RESTRICTIONS  
BUILDINGS 46 ("DOUBLE BARRACKS") AND 19 ("HOSPITAL")  
FT. MCKINLEY, PORTLAND, MAINE  
JUNE \_\_\_\_\_, 2008**

The following supplemental conditions and restrictions are imposed by the City of Portland (the "City") on that portion of the Ft. McKinley project ("Project") commonly known as Buildings 46 and 19, together with the ancillary service area, all as depicted on the map attached hereto as Attachment 1 ("Premises"), as conditions of the rezoning of the Premises at the request of The Inn At Diamond Cove, LLC ("IDC"), and consented to by the Diamond Cove Homeowners Association ("DCHA"):

1. Existing Conditions. The Premises are a portion of the development commonly known as Ft. McKinley, Great Diamond Island, Portland, Maine which is subject, inter alia, to those Conditions and Restrictions recorded in the Cumberland County Registry of Deeds in Book 8928, Page 263, as amended by Order of the Portland City Council on August 16, 2004 relating to ground transportation in and around the Project (collectively, the "Existing Conditions and Restrictions").

2. Supplemental Conditions and Restrictions. Notwithstanding the terms of the IR-3 zoning text otherwise applicable to the Premises, and the Existing Conditions and Restrictions, those buildings designated as Building 19 ("Hospital") and Building 46 ("Double Barracks"), the immediate grounds attendant thereto and a portion of the Open Space, all depicted on the site plans dated June \_\_\_\_\_, 2008, all may be redeveloped into individually owned and fully equipped condominium units, sometimes known as "hotelominiums" and a supporting pool/services area on the Open Space. "Hotelominium" is defined as privately owned residential condominium units (with kitchens) located within a structure that offers reasonable and customary on-site hotel services - these need to be better defined- which are limited to the unit owners, their guests, tenants in residence and members of the DCHA. The Hotelominium units may be rented (in whole or in part by virtue of attached bedrooms capable of being independently rented through a "lock out" system from the remainder of the unit) for varying durations to the general public through a centralized hospitality vendor. The Double Barracks may include up to a maximum of twenty (20) hotelominium units and the Hospital may include up to a maximum of twelve (12) hotelominium units. probably should include total number of rooms available for rent (i.e. lock out units, even if we don't classify them as "units") The units contained within the Double Barracks and the Hospital buildings shall become members of a separate condominium association established for these two rehabilitated buildings, and each unit will also be considered a "lot" within DCHA, subject to all of the applicable restrictions, covenants, conditions, assessments and the like of both DCHA and the newly-established condominium association.

~~The lots (individual residences) which have been renovated and for which a certificate of occupancy has been issued by the City are depicted on Attachment \_\_\_\_\_; the Double Barracks and the Hospital, both of which may be renovated, are depicted on~~

Attachment \_\_. The allowable approved rehabilitation of these buildings may include construction of a new swimming pool and related guest services building (what is a guest services building??) on that portion of the Open Space depicted on the site plans, a copy of the relevant portion of which appears as Attachment \_\_\_\_ hereto. The recording of the ~~this~~ within Amendment shall be deemed to supplement the Conditions and Restrictions recorded in Book 8928, Page 263 and the "Dedicated Open Space Plan" attached thereto as an Exhibit.

3.3. Disposal of Solid Waste. All solid waste generated on the Premises shall be collected and disposed of privately, on the mainland, with temporary storage of such waste being handled within the building and disposed of in accordance with all applicable regulations, codes and laws; or if, in the City's opinion, it would not create an unreasonable burden thereon, at a municipally-operated island solid waste disposal facility. ~~provided, however, that the Premises shall not be precluded from making arrangements with the City of Portland or other public entity for the storage and disposal of its solid waste.~~

4.4 Fire Protection. The Double Barracks and Hospital buildings shall be fully sprinkled and have installed, and at all times functional, a central fire alarm system operative prior to the issuance of any certificate of occupancy for the respective building.

5.5. Transportation Services. The Owner/Manager of the Premises shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from and between the Portland waterfront and the Diamond Cove Pier (or barge landing where appropriate for passengers and/or cargo) on a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service becomes unavailable, the Owner/Manager shall provide an equivalent alternative to such service, subject only to the approval thereof by the Public Utilities Commission, or such other regulatory authority having jurisdiction thereof. The Owner/Manager shall also provide suitable ground transportation from points of disembarkment within the Project to the hotel ~~miniums~~. The Owner/Manager shall not provide motorized ground transportation off the Ft. McKinley Project site and all such transportation shall strictly conform to all existing ordinances, rules and regulations concerning travel outside of the Project site to the public pier at the southerly end of Great Diamond Island. All purchasers of units at the Premises shall receive specific notice of the applicable rules and regulations, including the potential sanctions for failure to comply. Moreover, the City shall have no obligation to provide mainland parking for any owner, occupant, guest or invitee of any hotel ~~minium~~ unit or any manager or on-site staff thereof.

6. Disposal of Sanitary Waste. The IDC is obligated hereunder to involve the City in all aspects of its sanitation waste licensing, and any modifications thereto, with any local, state or federal agency. This includes providing the City with copies of all information submitted to said agencies and involving the City in all meetings and discussions concerning sanitary waste disposal.

6-7. Interpretation: Conflicts. The within conditions and restrictions are intended to supplement the existing Conditions and Restrictions and amendments thereto, all of which shall remain in full force and effect except as modified herein or as may be modified by further amendment or ordinance duly enacted by the City of Portland. In the event of any conflict between these Supplemental Conditions and Restrictions and the pre-existing Conditions and Restrictions, as amended, these Supplemental Conditions and Restrictions shall control.

COMPREHENSIVE UPDATE OF 1985 CONDITIONAL ZONING TEXT

DRAFT 06.20.08

2008

AMENDMENT TO PORTLAND CITY CODE

SECTION 14-49 (ZONING MAP)

RE: CONDITIONAL REZONING OF FT. MCKINLEY

WHEREAS, Diamond Cove Homeowner's Associates is the record owner and manager (DCHA or Owner) of certain land situated on the northerly portion of Great Diamond Island within the project commonly known as the Ft. McKinley property; and

WHEREAS, in 1985 the Ft. McKinley property was rezoned by the City of Portland (City) through a Conditional Zone Agreement subject to certain terms and conditions reflected in that document entitled "Conditions and Restrictions" recorded in the Cumberland county Registry of Deeds in Book 8928, Page 264, a copy of which is attached hereto as Attachment 1; and

WHEREAS, on August 16, 2004 the Ft. McKinley Conditional Zone Agreement was amended to further limit the use of motor vehicles at Ft. McKinley as set forth in the Portland City Council Order and the Conditions reflected in that Order, Attachment 2 and 3 respectively; and

WHEREAS, this amendment to the Conditional Rezoning Agreement is intended to update and incorporate the former amendment to the Rezoning Agreement; and

WHEREAS, the Planning Board, pursuant to 30-A M.R.S.A. Section 4352, and after notice and hearing and due deliberation thereon, recommended amending the Conditional Rezoning Agreement subject the terms and conditions contained herein; and

WHEREAS, the City Council hereby finds and declares that said amendment is ministerial in nature and would be pursuant to and consistent with the City's comprehensive plan and would satisfy the guidelines set forth in Section 14-145.13 of the Portland City Code, all for the reasons contained in the Planning Board's report accompanying this Amendment;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE, IN THE CITY COUNCIL, ASSEMBLED, AS FOLLOWS:

THAT, the Zoning Map of the City of Portland, Maine, dated December 2000, as amended, on file in the Office of the Director of Planning and Urban Development (incorporated by reference into the Zoning Ordinance by §14-

49 of the Portland City Code into this code by Section 14-49)and depicted below (Property or Premises) governs Ft. McKinley, subject, however, to the Conditions and Restrictions attached hereto.

INSERT MAP



### CONDITIONS AND RESTRICTIONS

The following conditions and restrictions are imposed by the City of Portland (on Diamond Cove Homeowner's Association as conditions of the rezoning of the Property from the R-3 Residential Zone to the IR-3 Island Residential Zone:

1. Development limited. The development, use and occupancy of the Premises shall be limited to one hundred thirty-four (134) dwelling units and other permitted uses, and uses accessory thereto. Except for the reconstruction, renovation and repair of existing buildings and structures, and the construction of minor additions and improvements thereto, there shall be no construction or development of any new principal building or structure on the Premises. All portions of the Premises identified on the map included in Attachment \_\_ attached hereto as open space shall be dedicated and reserved as such in perpetuity.

2. Completion of development. The development of the Premises as aforesaid shall be substantially completed within three (3) years after the issuance of all licenses, permits and approvals required and requiring final action by any administrative agency, board or commission, including but not limited to subdivision, site plan and site location of development approvals, but not including building, plumbing, electrical or similar permits, which licenses, permits and approvals shall hereafter be diligently pursued; provided, however that the time for performance hereunder shall be extended for the time during which performance is delayed by reasons wholly beyond the Owner's control, including but not limited to strikes, lock-outs, labor disputes, inability to procure materials, failure of power, riots, war, insurrection, administrative or judicial delay and similar reasons, but not including financial hardship or business conditions; provided, further, that the Planning Board may, after notice and hearing, extend the time for performance hereunder for up to one (1) additional year if it finds that substantial progress has been made toward completion, and that there is a reasonable likelihood of substantial completion within the time as extended.

3. Maintenance of streets, walks and landings. All streets and ways, walks and pedestrian rights of way, and landings, floats and docks on the Premises, including but not limited to those to which the public has a right of access, shall be kept reasonably safe and passable at all times, including but not limited to the off-season or winter months, and at the Owner's expense; provided, however, that the City may, from time to time, designate such areas as need not be kept clear of ice and snow when or where, in its opinion, the public health, safety and welfare do not require it; provided, further, that in the event that the Owner fails to perform any obligation hereunder, the City may, after giving actual notice to the Owner and a reasonable time to perform, enter upon the Premises, or any portion thereof, and take such reasonable steps, including but not limited to the exercise of self-help, as to it may seem necessary or appropriate to perform the same, the cost of which shall be reimbursed in full by the Owner upon demand.

4. Maintenance of utilities. All utilities and related infrastructure and improvements on the Premises, including but not limited to water, power,

*Applicant:  
to basic doc. alone  
& attach amts  
as separate*

communications, sewers and drains, surface drainage ways, street lights and hydrants, shall be kept fully operation and in good repair at all times, including but not limited to the off-season or winter months, and at the Owner's expense; provided, however, that in the event that the Owner fails to perform any obligation hereunder, the City may, after giving actual notice to the Owner and a reasonable time to perform, enter upon the Premises, or any portion thereof, and take such reasonable steps, including but not limited to the exercise of self-help, as to it may seem necessary or appropriate to perform the same, the cost of which shall be reimbursed in full by the Owner upon demand.

5. Disposal of sanitary waste. All sanitary waste generated on the Premises shall be collected and disposed of on the Premises by means of a community sewer and secondary treatment system which complies with all applicable federal, state and local regulations, and at the Owner's expense. 6. Disposal of solid waste. All solid waste generated on the Premises shall be collected and disposed of on the mainland or if, in the City's opinion, it would not create an unreasonable burden thereon, at a municipally-operated island solid waste disposal facility, in a manner which meets all applicable federal, state and local requirements, and at the Owner's expense.

7. Fire protection, public safety and emergency services. Before occupancy of the Premises, or any portion thereof, the Owner shall, at its own expense, provide to the City:

- (a) a fully equipped "Quint truck", so-called, or its equivalent, for fire protection purposes, which vehicle, whether new or used, shall conform to City specifications and be leased to the City under a written net lease-purchase agreement in a form mutually satisfactory to the parties and upon commercially reasonable terms, at the end of which lease term title to said vehicle shall be transferred to the City free and clear of all liens and encumbrances, and at no additional charge;
- (b) a fully equipped multi-purpose truck van, for public safety and emergency purposes, which vehicle, whether new or used, shall conform to City specifications and be leased to the City for its useful life under a written net lease agreement in a form mutually satisfactory to the parties and providing for, among other things, annual lease payments in the amount of one dollar (\$1.00); and
- (c) a building or buildings, or portions thereof, suitably located on the Premises, for permanent maintenance and storage of said vehicles and related apparatus and equipment, and housing of at least two (2) City personnel associated therewith, which facility shall conform to City specifications and be leased to the City under a ninety-nine (99) year written net lease agreement in a form mutually satisfactory to the parties and providing for, among other things, annual lease payments in the amount of one dollar (\$1.00), and delivery of possession on a "turn-key"

basis.

Upon the City's occupancy of said facility, the Owner shall, at its own expense, provide at all times thereafter a number, not to exceed two (2), of qualified private personnel equal to the number of City personnel then assigned thereto, which private personnel shall be on the Premises and available at all times on an on-call basis to assist said City personnel in the rendering of fire protection, public safety and emergency services on or to the Premises; provided, however, that nothing herein shall constitute any representation or commitment by the City to provide any particular level of staffing or services. Said private personnel shall be trained and equipped for such services by the City and at its expense, and shall be under the direction and supervision of authorized City personnel at all times while so engaged; provided, however, that in no case shall said private personnel be deemed agents or employees of the City for any purpose, including but not limited to workers' compensation, unemployment compensation, tort claims liability and collective bargaining; provided, further, that notwithstanding the foregoing, in the event that the City is held liable for any claim arising out of or relating to any actions of said private personnel, which actions were not pursuant to and consistent with the directions of authorized City personnel, the Owner shall indemnify and save forever harmless the City from and against any and all such claims.

8. Water transportation services. The Owner shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from and between the Portland waterfront and Diamond Cove via a suitable docking facility on the Premises and on a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service is or at any time becomes unavailable, the Owner shall, at its own expense, provide an equivalent alternative to such service, subject only to the approval thereof by the Public Utilities Commission, or such other regulatory authority having jurisdiction thereof.

9. Restrictions on motor vehicles. Except for vehicles used primarily for construction, maintenance, service and the common transportation of goods and passengers, and fire protection, public safety and emergency vehicles, no motor vehicles, as defined in 29 M.R.S.A. Section 1(7), but including snowmobiles, shall be operated or stored, temporarily or otherwise, on the Premises; provided that nothing contained herein shall be deemed to restrict electrically powered golf carts, neighborhood electrical vehicles, electric personal assistive mobility devices (a/k/a human transporters), low-speed as currently defined in 29-A M.R.S.A. §101 or any similar vehicles.

The latter vehicles are permitted not to exceed 82 in number to be allocated by the Diamond Cove Homeowner's Association to homeowners on a first in time ownership basis.

Within sixty (60) days of approval of this amendment by the Portland City Council, Diamond Cove Homeowners Association shall file a transportation management plan

with the City's Planning Authority that includes but is not limited to a description of the process for allocating vehicle permits; a description of the means and methods of providing transportation for the disabled on the island; a restriction that confines permitted vehicles to established roadways that are presently within the Association property; a description of available common transportation service vehicles and how they will be managed for the needs of residents and visitors; and a description of how construction, supply-delivery and service vehicles from outside the island including barge ingress and egress routes to the island are managed.

This paragraph is otherwise governed by the terms and conditions contained within the Attachment \_\_ entitled "Conditions Restricting Use of Diamond Cove Motor Vehicles Outside of Diamond Cove" which document is incorporated by reference.

10. Applicability of other laws. The development, use and occupancy of the Premises shall be subject to all other applicable laws, ordinances, regulations and requirements of the City as they may from time to time exist, and neither these conditions or restrictions nor the performance of any obligation hereunder shall constitute compliance therewith or prevent the enforcement thereof, any violation of which shall also constitute a breach of these conditions and restrictions, and breach of which shall also constitute a violation of Chapter 14, Article III (Zoning) of the Portland City Code.

11. Successors bound. These conditions and restrictions shall bind the Owner, its successors and assigns, of or to the Premises, or any portion thereof or any interest therein, including but not limited to any security interest, and any person in possession or occupancy of the Premises, or any portion thereof, and shall inure to the benefit of any be enforceable by the City. The Owner shall, at its own expense, record a copy of these conditions and restrictions in the Cumberland County Registry of Deeds, and shall, by deed, covenant, declaration of condominium or other record or recordable instruments, as appropriate, ensure that these conditions and restrictions are enforceable by the City against all such successors, assigns and persons. Nothing herein shall be deemed to limit the Owner's right of alienability of the Premises, or any portion thereof, subject to these conditions and restrictions, which conditions and restrictions shall run with the land and be binding upon the Owner, its successors and assigns, as their interests may appear.

12. No reliance or estoppel. Nothing in these conditions or restrictions shall constitute any representation or commitment by the City to retain the zoning classification of the Premises, or shall entitle the Owner to rely thereon for any purpose, or shall estop the City from any future rezoning or exercise of other authority with respect to the Premises. Nothing herein shall be deemed to preclude the Owner from petitioning the City for any future rezoning of the Premises or other property in the vicinity thereof; provided, however, that nothing herein shall constitute any representation or commitment by the City to grant such a petition or otherwise act thereon.

13. Breach. In the event DCHA or any successor should fail to utilize the

**PROPERTY** in accordance with this Agreement, or in the event of DCHA's breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland's Land Use Code which would otherwise be applicable to property situated in the IR-3 zone, the **CITY** may prosecute such violations in accordance with 30-A M.R.S.A. § 4452, M.R.Civ.P. 80K, or in any other manner available by law and seek the remedies authorized by that law.

In addition, if such enforcement action should result in a finding that DCHA has breached the Agreement, then either the Portland Planning Board, or at the request of the Planning Authority, or the City Council on its own initiative, may act either to modify the Agreement or to rezone the **PROPERTY**.

14. Declaration of invalidity. In the event that these conditions and restrictions, or any portion thereof, are declared invalid for any reason by a court of competent jurisdiction, the City shall invoke the same procedure as hereinbefore provided for breach of these conditions and restrictions.

**ATTACHMENT**  
**Conditions Restricting Use of Diamond Cove Motor Vehicles**  
**Outside of Diamond Cove**

1. No vehicle shall pass from Diamond Cove to the southerly part of Great Diamond Island, except as permitted herein. **DCHA** will take the following steps to enforce the existing restrictions on motor vehicle traffic entering or exiting the southerly boundary of the Diamond Cove property:
  - (a) **DCHA** will immediately close and lock the so-called "lower gate" at the Diamond Cove property line on West Shore Drive, to prohibit vehicular traffic from entering or exiting through this gate. **DCHA** will place a means to open this gate with first responders on the island, selected fire company officers, and the fire truck and ambulance to ensure that the gate can be opened quickly in an emergency. Said means will be subject to the approval of the Portland Fire Chief or his designee. **DCHA** will also provide the City's Department of Public Works with a means to open this gate for the purpose of accessing any facility within the Diamond Cove property used by DPW pursuant to an agreement with **DCHA**.
  - (b) **DCHA** will secure the so-called "upper gate" on Diamond Avenue in the same manner as the lower gate. Only a pedestrian access gate shall remain permanently open.
  - (c) Only vehicles used primarily for construction, maintenance, service and the common transportation of goods and passengers, and fire protection, public safety and emergency vehicles, (hereinafter sometimes referred to as "Exempted Vehicles") will be provided by **DCHA** with the means to open the lower gate and/or the upper gate and only these vehicles may pass to the southerly part of Great Diamond Island. **DCHA** will arrange to open the lower gate for these vehicles in order to use the barge landing on **DCHA** property from which these vehicles may pass to and from the southerly part of Great Diamond Island or remain within the Cove pursuant to Cove regulations.
  - (d) **DCHA** will institute a registration and approval process for Exempted Vehicles that are permitted to open the lower gate and/or the upper gate and exit the southerly boundary of the Diamond Cove property. Vehicles approved by **DCHA** must also be approved by the City Office of Code Enforcement. If **DCHA** determines that an application meets the

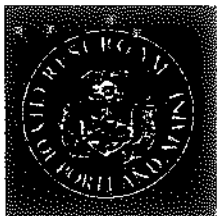
definition of Exempted Vehicles set forth in Section 1(c) above, then **DCHA** may provide the operator with a key and a prominent exemption decal provided by the City shall be placed on the vehicle. Any such operator will be required to sign a statement (a) agreeing that the key would be used only with the specified vehicle and only for the specified exempted purpose, and (b) acknowledging the right of **DCHA** and the City to impose fines and to revoke gate privileges for violations of the foregoing use restrictions. **DCHA** will identify any such approved operator/vehicle on a list of exemptions to be kept on file at the office of the Diamond Cove site manager (currently Dirigo Management Company, One City Center, 4<sup>th</sup> Floor, Portland, Maine), which list and any amendments thereto shall also be provided to the City's Office of Code Enforcement.

- (e) Notwithstanding any other state or local law, any non-exempted vehicle must be annually registered with the City and must display in a clearly visible manner a license plate provided by the City with a clearly visible number in the same manner and location required by State law for license plates on motor vehicles. **DCHA** shall provide the City with a list containing the names and addresses of the registered owner of each such vehicle and the license plate number of the vehicle within thirty (30) days of the date upon which the Council approves the amendment to allow golf carts in the IR-3 zone and within ten (10) days for any subsequently registered vehicles.
- (f) **DCHA** will levy fines for violations of the foregoing restrictions, consistent with the Diamond Cove Declaration, in cases when an operator of a motorized vehicle of any kind (including golf carts and electric personal assistive mobility devices, a/k/a human transporters) is found to pass south of the southerly boundary of the Diamond Cove property for any purpose other than those set forth for Exempted Vehicles. In the event of apparent violations, the site manager will be directed to send a letter identifying the date and time in question to the holder of the key and notify the City. The holder of the key will have the opportunity to respond to explain the circumstances of the boundary crossing. Non-conforming crossing of the gate would result in a penalty, imposed by the **DCHA** Board on the holder of the key. Initially, penalties would be as follows: First offense – \$50 fine; second offense – \$100 fine; third offense – \$200 fine and revocation of crossing privileges. Nothing in this paragraph shall be construed or applied to prevent the City from bringing separate enforcement actions for violations.
- (g) Any other language in this contract zone agreement notwithstanding such violations may, in the City's discretion, be prosecuted as Land Use violations pursuant to 30-A M.R.S.A. § 4452 and Rule 80K of the Maine

Rules of Civil Procedure. In all cases the registered owner of a non-exempted vehicle shall be liable for any violations and sanctions unless the registered owner provides clear and convincing evidence showing that the use at the time of the violation was unauthorized by him or her.

- (h) **DCHA** will immediately provide notice to all of its members of the foregoing policies and procedures.
2. Nothing contained herein shall be deemed to grant any third party rights. Without limiting the generality of the foregoing, nothing contained herein shall be deemed to entitle any third party with the means of opening either the upper gate or the lower gate without **DCHA** approval.





*Strengthening a Remarkable City. Building a Community for Life* [www.portlandmaine.gov](http://www.portlandmaine.gov)

Planning and Development Department  
Lee D. Urban, Director

Planning Division  
Alexander Jaegerman, Director

August 15, 2007

Ronald N. Ward, Esq.  
Drummond Woodsum & MacMahon  
PO Box 9781, 245 Commercial Street  
Portland, ME 04104

Re: Inn at Diamond Cove

Dear Ron:

You have inquired as to the procedure for review for the proposal for the redevelopment of the double barracks on Great Diamond Island. After reviewing the document entitled "The Development of the Double Barracks & Hospital," as well as your responses the follow-up questions contained in your email of July 27, 2007, The City's Planning Department has made the following initial conclusions.

From the information provided, it appears that the intention is to run an inn at the location of the barracks building on GDI, which is located within the IR-3 zone. An inn is an allowable use within the zone. However, the definition of "inn" under Section 14-47 states that "guest rooms shall not contain separate kitchen facilities." We recommend that the way to resolve this is to apply for an amendment to the conditional zone to allow for inns that are comprised of rooms with kitchen facilities.

Second, it appears from the site plan that the pool is proposed to be constructed in an area that has been designated as open space. This would also require an amendment to the conditional zone.

The question of site plan review is somewhat complicated. The project would be subject to major site plan review based on the size of the reuse and the site improvements including the gazebo and pool and patio area. The reuse of the barracks building itself may be eligible for exemption from site plan review to the extent that the project remains within the extent of the original building. If the gazebo is going to be greater than 500 square feet, that would bring this project into major site plan review or perhaps it could be construed as a minor site plan and

partial exemption. If there is an expansion of the sand filter system, that might also constitute a project component subject to site plan review. We cannot give a definitive ruling on these matters at this time, but if you proceed with the zoning amendment, we will scope out the subsequent reviews on the basis of the materials submitted at that time.

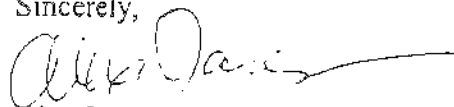
Fourth, in reviewing the original conditional rezoning for Diamond Cove, the commercial uses were shown as clustered around the cove area, while the parade ground buildings were depicted as residential. It does not appear to be specifically restricted to that arrangement, but if a conditional rezoning amendment is pursued, that would eliminate any doubt or debate about the intent of the original rezoning regarding the location of commercial uses.

Finally, the number of units proposed for each building is specifically set forth in the subdivision plan. Building 46 is allotted 14 units. The proposal to increase the number of units in building 46 to 22 units may require an amendment to the subdivision.

As stated previously, these conclusions are based on the information that has been submitted. Please feel free to provide additional information if you feel we have mischaracterized the proposed project.

Please contact me if you have any questions.

Sincerely,



Alex Jaegerman  
Planning Division Director

- cc: Joe Gray, City Manager
- Lee Urban, Director of Planning & Development
- Mary Costigan, Associate Corporation Counsel
- Rick Knowland, Senior Planner
- Barbara Barhydt, Development Review Services Manager



## Rick Knowland - Inn at Diamond Cove, LLC conditional zoning amendment

**From:** Rick Knowland  
**To:** rnw@dwrmlaw.com  
**Date:** 4/9/2008 4:43 PM  
**Subject:** Inn at Diamond Cove, LLC conditional zoning amendment  
**CC:** Alex Jaegerman ; Barbara Barhydt; Marge Schmuckal; Penny Littell

Ron, I thought I'd give you some quick comments on the Diamond Cove conditional zoning amendments proposed by the Inn at Diamond Cove, LLC, that was submitted yesterday. With a tight time frame before the workshop, I'd like to give you the benefit of initial staff comments.

1. It was stated the wastewater flow data sheet was to be updated reflecting the hospital building but as a stand alone document it falls short on details. Was there a report/memo that accompanied this chart? Is there a narrative that explains how the sanitary waste generated by the barracks and hospital buildings is to be handled? (Remember this project was approved 20 plus years ago so it would be extremely helpful to have written narrative of the existing sewer treatment system, where it is located, what type of system is it, the capacity of the system and DEP license requirements). Does the applicant have a letter from the Maine DEP regarding their review of this project?

2. Comments on text amendment to conditional rezoning of Ft. McKinley:

a. Second paragraph; section "9a" appears to be the wrong reference. We assumed the proposed text would follow under paragraph 1 of the original conditional zoning text document.

b. The paragraph references "residential hotel condominiums" and then "residential condominiums". Which one is it? Should choose which term you'd like to use. Also the use should be defined in the paragraph.

c. What is meant by the "the immediate attendant there to and that portion of the Open Space"?

d. The paragraph should reference that a portion of the dedicated open space shall be used for the improvements noted on the site plan including a swimming pool and the gazebo (food and beverage building). Also how do you deal with the the fact "open space shall be dedicated and reserved as such in perpetuity" according to paragraph 1 of the original conditional zoning?

Other questions/issues:

3. Will there be a separate condo association from the Diamond Cove condo association? If yes, what is the relationship?

4. The paragraph references a separate lot for the hospital and barracks? Unless I'm missing something, this seems unusual in that I don't believe the rest of Fort McKinley has separate lots for buildings. Please explain. I'm not sure what the implications maybe for Fort McKinley as a planned unit development.

5. Do you have a letter of support from the Diamond Cove condo association supporting the proposal?

6. What changes will need to be made to the Diamond Cove condo documents in light of this proposal?

7. A more detailed explanation of the on-site transportation methods for this project in relation to the Diamond Cove condo transportation system would be appropriate.

8. There is a discrepancy between large size plan submitted and the smaller 8 1/2 inch by 11 inch site plan

2-0-2

submitted. Which one is operative? Also the appropriate site plan should have a date on it so it can be properly referenced. We will need an 11 inch by 17 inch copy of the large plan.

9. The original conditional zoning provision was submitted but it was revised a few years ago so I'll get an updated copy to you.

10. The density formula for the IR-3 will need to be verified in terms of the number of existing dwelling units and the hotel condos. You probably have plenty of land area but that calculation needs to take place.

11. A better graphic for the entire project would be appropriate. Perhaps a color aerial (11 by 17) labeling the barracks and hospital location could be provided.

12. The original IR-3 plan for Diamond Cove clustered commercial uses near the ferry landing. This proposal is a change from that plan so I'd suggest you have some type of explanation for this change including the outside improvements such as the swimming pool and bar/food building.

13. I've not done an exhaustive review of the IR-3 zone development standards that track the policy statements of the IR-3 zone. You'll want to take a look at these relative to your project.

Ron, These are some very quick comments. Obviously the more detailed information submitted in an application, the more complete review comments we can provide. We had initially discussed having one workshop on this item but there are significant gaps in the submission so we'll see how the initial workshop goes.

These comments are focused on the zoning amendment itself and not on the development details of the project.

As other review comments become available, I will forward them accordingly. If anyone on my cc list has comments I've missed, please forward them accordingly.

**Rick Knowland - Inn at Diamond Cove, LLC zoning amendment**

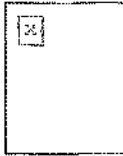
**From:** Rick Knowland  
**To:** rrw@dwmrlaw.com  
**Date:** 4/11/2008 8:23 AM  
**Subject:** Inn at Diamond Cove, LLC zoning amendment  
**CC:** Alex Jaegerman ; Barbara Barhydt; Marge Schmuckal; Mike Murray; Penny Littell

Ron, As a follow-up to my Wednesday comments email, I've gone through our files and found a report prepared by Oliver Associates dated June 2000 entitled "Wastewater Treatment Infrastructure Evaluation" which was prepared for the Diamond Cove project.

If your team doesn't have a copy of this report I'd be happy to forward it to you.

Regarding other comments on the conditional zoning application, I've received a comment regarding mainland parking for this use. Obviously there was a solution some time ago for Diamond Cove but I believe it would be important to refresh our memories on this issue and how the developer intends to address this. This will undoubtedly come up in the review process.

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JOHN ELIAS BALDACCI  
GOVERNOR

May 21, 2008

DAVID P. LITTELL  
COMMISSIONER

RE: Great Diamond Island Redevelopment Plan

Dear Sirs:

I am getting many calls from Island folks stating that the redevelopment of the double barracks is considerably more extensive than that which was presented to me for analysis by Joe Laverriere of DeLuca Hoffmann Associates in August of 2007. Although this public alarm is generally the norm for such projects, in this case I am somewhat disturbed by the difference between what is being presented to me and what is actually being proposed. So at this time I would like some very clear precise details on what you are intending to do.

In October of 2005 this Department generously renewed the license with a 35,000 gpd monthly average instead of the 40,000 gpd maximum because it was our assessment that meltwater and storm events were regularly causing violations outside of the licensees control. For example, a 5-yr storm event (4.3 inches of rain within a 24 hour period) over the 34,500 sq.ft. surface of the sand filter (assuming 100% inflow) would add 92,719 gallons -- roughly 2.5 times the treatment capacity of the system. A modest storm event (1-inch of rain) would add 21,563 gallons in that day.

In August of 2007, Joe Laverriere of DeLuca Hoffmann called me and asked about using the OBD. The island redevelopment at that time, was confined to the double barracks (see attachment A). As Joe explained the project to me, the building was to be used for 20 residential condominiums containing 42 bedrooms. I asked for design flows for both the existing and the proposed wastewater discharges and the flows submitted were based on the following residential occupancy: 6 single-bedroom residential units, 6 two-bedroom residential units, and 8 three-bedroom residential units (20 units containing 42 bedrooms). The Deluca Hoffman design flows for the proposed development were based on single-family dwellings, but were slightly understated as single-bedroom units may only be reduced to 120 gpd per unit per the *Maine Subsurface Waste Water Disposal Rules*, 10-144 CMR 241 (501.2). The DeLuca Hoffman design flows show a 9,780 difference between the treatment capacity and the existing development. My figures were similar, so, with the assumption that the 1,900 remaining feet of the 4,900 linear feet of sewer would be rehabilitated or replaced, it was my assessment that the development should not cause violations or flows in excess of the treatment capacity of the OBD system.

However, the City of Portland recently contacted me to ask if the treatment system has adequate capacity and whether the renovated barracks may hook into the OBD treatment system. My answer was that, because the barracks was continuously a part of GDI phase I development, the Barracks may use the OBD, provided there is sufficient estimated and actual capacity. My best professional judgment was still that, provided the remaining 1,900 linear feet of old tile was replaced/refurbished to eliminate to inflow/infiltration problem the system had marginally enough capacity and the license would allow it.

The City asked me if it was presented to me as a hotel or condo. This Department was still unconcerned because, using the 100 gpd/bedroom design standard for hotels the design flows were still within the treatment capacity, even when factoring in 9 employees within a 24-hr. period.

PROPOSED USES ASSOCIATED WITH REDEVELOPMENT OF BARRACKS AS RESIDENTIAL						
DESCRIPTION	UNITS	ADF RATE (gpd/unit)	ADF Total (gpd)	144 CMR 241 (gpd/unit)	144 CMR 241 Total (gpd)	COMMENTS
1 Bedrm. Residential	6	90	540	120*	720*	*144 CMR 241.501.2
1 Bedrm. Residential	6	180	1,080	180	1,080	
1 Bedrm. Residential	8	270	2,160	270	2,160	
Totals:	20		3780		3,960	

1 Bedrm. Hotel	6		100	600
2 Bedrm. Hotel	6		200	1,200
3 Bedrm. Hotel	8		300	2,400
9 Employees? (guess)			15	135
				4,335

Now, according to Marybeth Richardson, it would appear that the proposal is indeed a hotel. According to floor plans sent to me, there appears to be a 62-seat glassed-in garden restaurant (reportedly, breakfast only 620 gpd without employees) in addition to the 42 bedrooms. Furthermore, the former hospital (building #19) is also being redeveloped into an additional 12 units (assuming the same ratio – 24 bedrooms), and an islander reports that the proposal includes a swimming pool. If the hospital redevelopment mirrors the double barracks, with restaurant (and pool facilities), there is little or no excess capacity beyond that built into the design flows. I haven't included any calculations for the swimming pool(s). The daily backwash from the swimming pool filter(s) may be substantial. Draining the heavily chlorinated pool into the OBD would create overages (violations) and potential treatment problems. These factors in combination with storm events will likely push the licensees into noncompliance on a regular basis.

So, I am concerned that development at the level proposed will push the limits just a little too far, creating violations of the license and making renewal difficult.

Please submit, in writing, your proposal so that I can provide an accurate analysis.

**GREAT DIAMOND ISLAND**  
**WASTEWATER FLOWS TRIBUTARY TO OVERBOARD DISCHARGE SYSTEM**  
**WASTE DISCHARGE LICENSE W006931-41-A-N**

**CURRENT USES**

DESCRIPTION	UNITS	ADF RATE GPD	ADF GPD	COMMENTS
1 BEDROOM RESIDENTIAL UNITS	2	90	180	
2 BEDROOM RESIDENTIAL UNITS	15	180	2,700	
3 BEDROOM RESIDENTIAL UNITS	53	270	14,310	
4 BEDROOM RESIDENTIAL UNITS	9	360	3,240	
RESTAURANT (2 MEALS PER DAY)				
SEATS	161	20	3,220	NOTE 1
EMPLOYEES	18	15	270	
SPECIAL EVENT TENT (ASSEMBLY AREA)				
AVG. NUMBER OF PEOPLE PER EVENT	100	2	200	NOTE 2
ADMINISTRATION / MAINTENANCE BLDG.	2	240	480	
MARINA				
PUBLIC SLIPS	3	30	90	NOTE 3
GIFT STORE				
EMPLOYEES	2	15	30	

<b>SUBTOTAL</b>	<b>24,720</b>	<b>GPD</b>
-----------------	---------------	------------

**PROPOSED USES ASSOCIATED WITH REDEVELOPMENT OF BARRACKS (SEE NOTE 4)**

DESCRIPTION	UNITS	ADF RATE GPD	ADF GPD	COMMENTS
1 BEDROOM RESIDENTIAL UNITS	6	90	540	
2 BEDROOM RESIDENTIAL UNITS	6	180	1,080	
3 BEDROOM RESIDENTIAL UNITS	8	270	2,160	

<b>SUBTOTAL</b>	<b>3,780</b>	<b>GPD</b>
-----------------	--------------	------------

TOTAL SEWER FLOW	28,500	GPD
ALLOWABLE IH FLOW	3,000	GPD
TOTAL FLOW	31,500	GPD

AVAILABLE OBD SYSTEM TREATMENT CAPACITY	34,800	GPD
EXCESS CAPACITY	3,000	GPD

NOTE 1 - BASED UPON INFORMATION PROVIDED BY JOHN HOWARD, OWNER OF DIAMOND'S EDGE RESTAURANT, THE MAXIMUM SEATING CAPACITY IS 161 FOR THE RESTAURANT AND BAR. THE RESTAURANT HAS A TOTAL OF 18 EMPLOYEES SERVING 2 MEALS A DAY (LUNCH AND DINNER). THE AVERAGE DAILY NUMBER OF MEALS SERVED (BASED UPON PEAK MONTHS OF JULY AND AUGUST) ARE:

- 100 PEOPLE AT LUNCH
- 160 PEOPLE AT DINNER

NOTE 2 - BASED UPON INFORMATION PROVIDED BY JOHN HOWARD, OWNER OF DIAMOND'S EDGE RESTAURANT, THERE ARE A MAXIMUM OF 17 SPECIAL EVENTS IN A FULL SEASON WITH AN AVERAGE OF 100 PEOPLE PER EVENT. THE STAFF AT THE RESTAURANT SERVE THE SPECIAL EVENT ACTIVITY; THEREFORE, SPECIAL EVENT STAFF ARE INCLUDED UNDER THE RESTAURANT.

NOTE 3 - BASED UPON INFORMATION PROVIDED BY JOHN HOWARD, OWNER OF DIAMOND'S EDGE RESTAURANT, WHILE PROVISIONS FOR PUMP-OUT ARE AVAILABLE FOR THE PUBLIC MARINA SLIPS, THESE FACILITIES HAVE NEVER BEEN USED BY THE GENERAL PUBLIC.

NOTE 4 - PROPOSED USES ASSOCIATED WITH THE REDEVELOPMENT OF THE BARRACKS BUILDING IS BASED UPON INFORMATION PROVIDED BY DAVID BATEMAN, DEVELOPER OF PROJECT.



THE DEVELOPMENT OF THE  
DOUBLE BARRACKS  
& HOSPITAL



The Inn At Diamond Cove

Confidential -- Solely for the Use of  
DCHA Homeowners

# Background Introduction

Last September a survey was taken of the Diamond Cove Homeowners Association to determine what you wanted the Board of Directors to focus on in the coming year. The number one priority, as ranked by the majority of the homeowners, was to "Develop A Plan To Deal With The Hospital And Double Barracks".

Since that time your board has spent considerable effort accomplishing this mandate, and is pleased to announce that we do have a plan for your consideration.

This narrative will be one of two written communications you will receive from the board, and it will provide a general outline of the development project, including the pros and cons, and our recommendation.

The second communication, planned to be distributed on June 1st, will include a copy of a legal document necessary to amend our covenants to allow the development to proceed, plus a ballot for each homeowner to cast, either in favor or opposition to the project. You will have approximately 3 weeks to cast your vote, and during that time, a series of meetings, along with an email process, will be set up to answer any questions.

This is a complex project. It involves DCHA, the City of Portland, the developer, and all the agencies that govern what takes place at Diamond Cove. As such, it will require your careful review and understanding of all the facts so that you can make a thoughtful decision that is in the best long term interest of Diamond Cove.

The developer has negotiated with the City of Portland a one year option to purchase the Hospital building, and at this time there is no action for the DCHA. Present thinking by the developer is that the Hospital would most likely lend itself to a 3-4 unit residence.

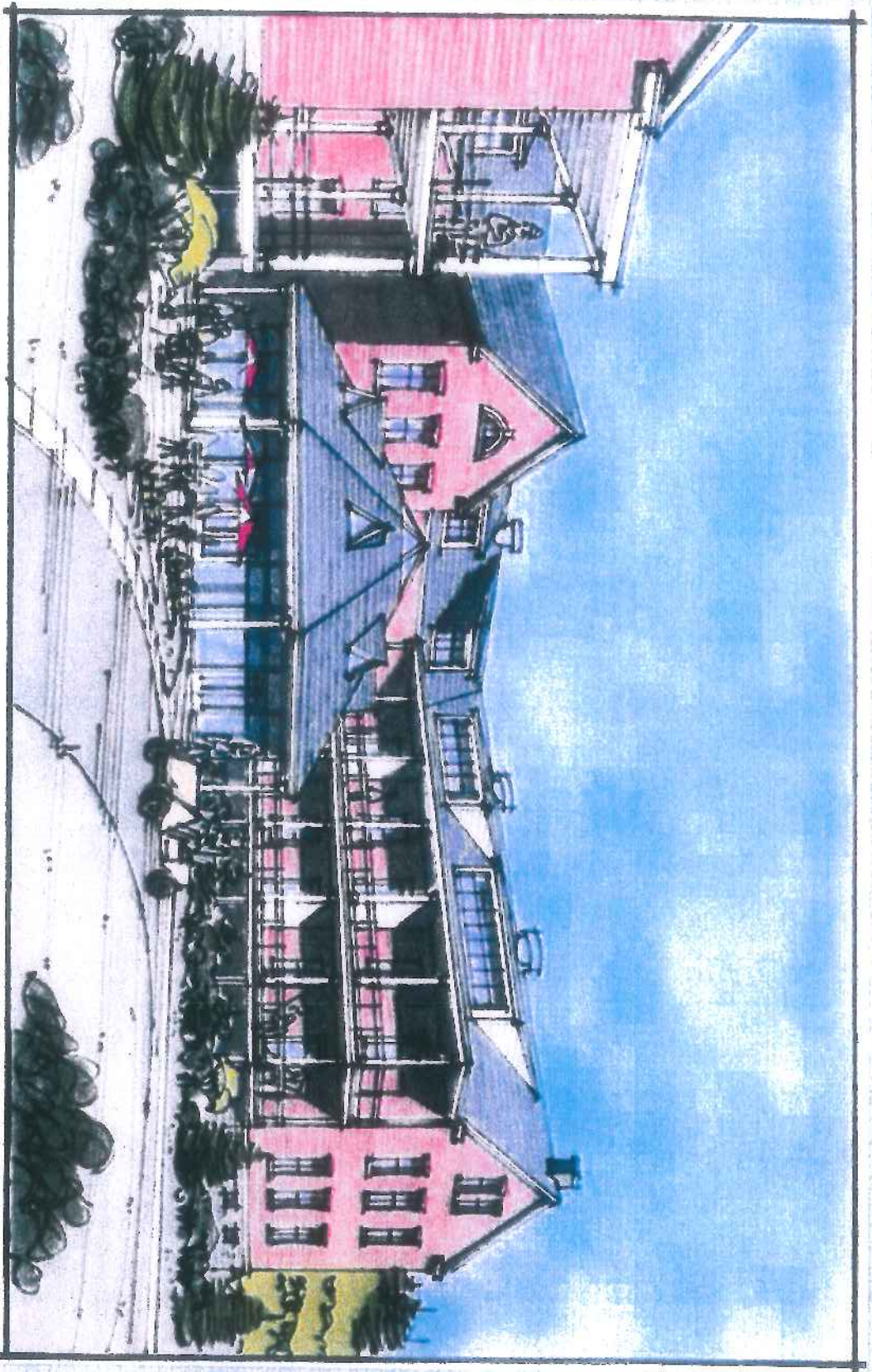
# The Project - Double Barracks

- Name: The Inn at Diamond Cove
- Developers: Hart Hotels and Charles Deslauriers
  - Hart Hotels, Inc. is the developer, owner and manager of hotels and restaurants including the Four Diamond awarded Portland Harbor Hotel. <http://www.harthotels.com/>
  - Charles Deslauriers has been involved in the development of dozens of hotels throughout the United States and Canada.
- Owners Representatives:
  - Construction Manager: Portland Builders
  - Development Consultant: Baraman Partners, LLC
  - Project Architect: David Lloyd A.I.A
  - Project Engineer: Deluca Hoffman Associates  
Joseph Laverriere
- Concept: Create a destination condominium hotel operating for 6 month season
  - Renovate the Double Barracks up to 22 condominium units
  - Each unit will be able to participate in hotel rental program
  - Units projected to rent for approximately \$350 per night in season.
  - Development Timeframe: Construction starts this fall and projected to be completed for 2008 season
- Services/Amenities:
  - The Inn at Diamond Cove will have its own swimming pool
  - The Inn at Diamond Cove will operate its own van service
  - The Inn at Diamond Cove will provide its own exterior maintenance
  - The Inn at Diamond Cove will have its own security service.

# Double Barracks Project Description

- The proposed concept is based on a format which has been successfully used in prior developments by this Developer.
- The double barracks building would be renovated to accommodate up to twenty two (22) condominium units which could be placed into a hotel rental pool.
- The property would operate as a destination hotel for a six month season each year (May thru October).
- The plan for the renovated double barracks would provide a main entrance at the rear of the building within the courtyard, framed by the two end wings. An elevator and entry element would be incorporated into a new addition at the center.
- Directly across from the entry courtyard (on a portion of what currently is open space recreation area) will be a new swimming pool and service bar.

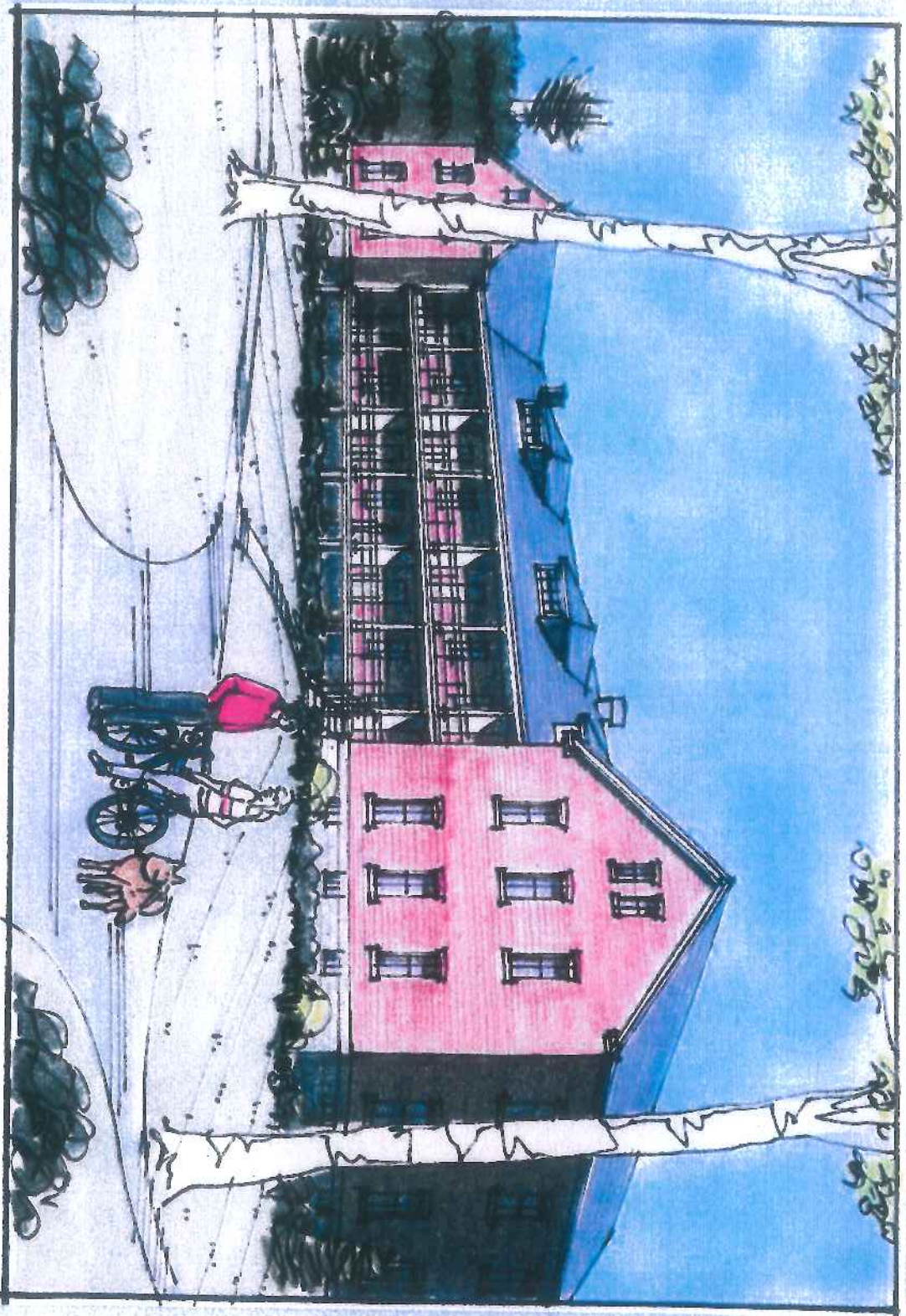
# Architect Rendering - Double Barracks



Rear façade facing away from the parade ground

Confidential -- Solely for the Use of  
DCHA Homeowners

# Architect Rendering - Double Barracks

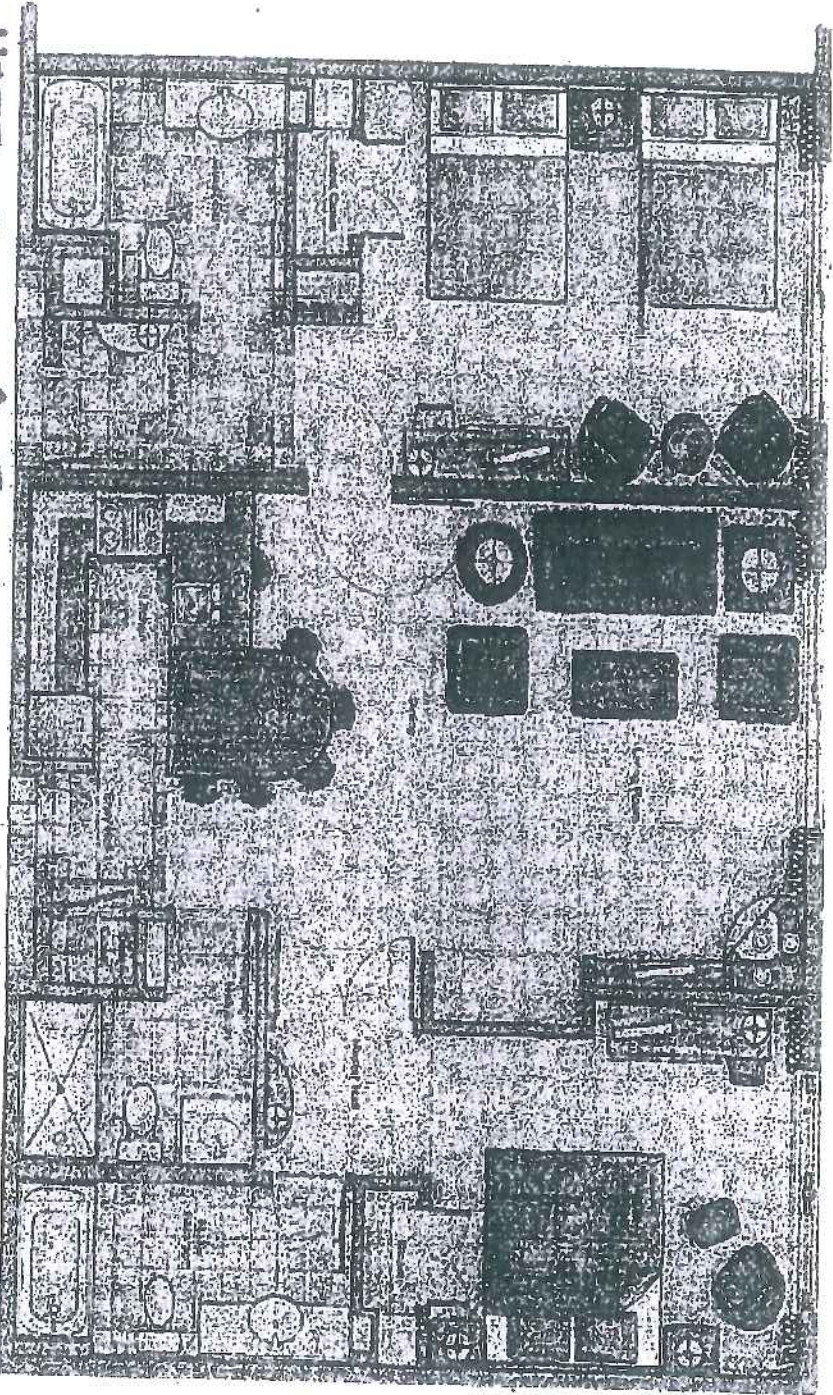


## Facade facing the parade ground

Confidential -- Solely for the Use of  
DCHA Homeowners

# Inn at Diamond Cove: A Two Bedroom Unit

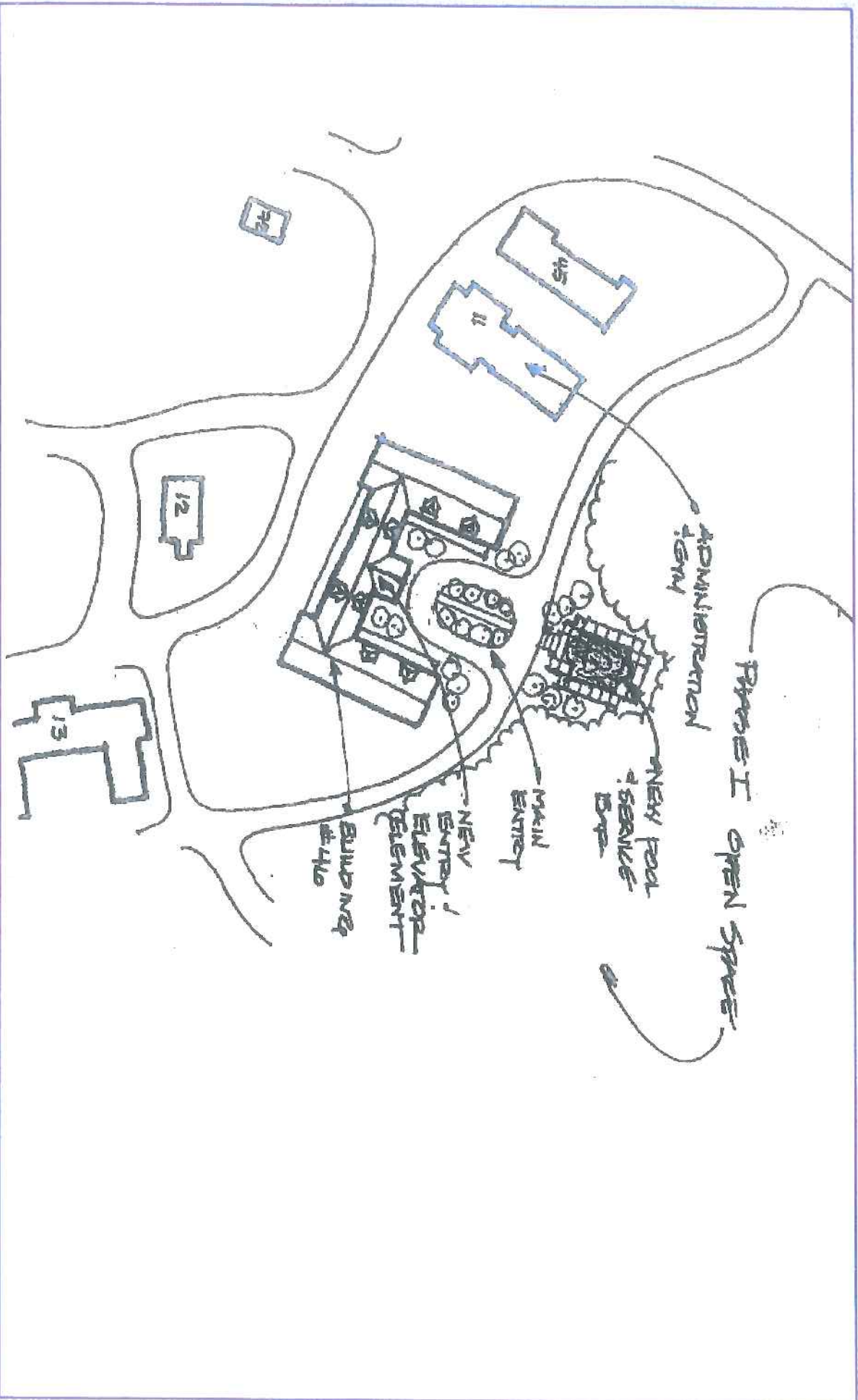
Example



HOTEL RM. ▲ ENTRY ▲ ENTRY / SUITE UNIT

Confidential -- Solely for the Use of  
DCHA Homeowners

# Inn At Diamond Cove Site Plan



Confidential -- Solely for the Use of  
DCHA Homeowners



# Benefits To Diamond Cove Homeowners

- **Revenue:**

- At current rates, the Inn will pay approximately \$130,000 per year in dues, if all 22 units are built, starting upon completion. This represents 17% of total dues presently being collected. Since the Inn will have its own pool and van, thereby mitigating demand on our infrastructure. The additional revenue should provide DCHA more flexibility in covering operating and capital costs.
- The Inn will pay a negotiated fee for use of the administration building and/or gym for conferences or functions.

- **Property Values:**

- The Inn will market to upscale clients who could become future home buyers.
- The relief on escalating dues should make properties more attractive to buyers
- For those DC homeowners who wish to rent their units through the existing rental program, the possibility exists that corporate conference groups would find that to be an attractive option.
- The marketing of the Inn will create more awareness of Diamond Cove
- The elimination of an eyesore should enhance property values.

- **Service Support:**

- The restaurant, marina, general store, and spa should all benefit from the existence of the Inn. They may also find it beneficial to extend their season.
- Additional leverage with Casco Bay Lines to improve schedules
- The Inn may institute a private water transportation service available to DCHA residents
- With 24 hour security and professional management, issues with excessive, late night noise should be mitigated.

# Requirements of Diamond Cove

- Diamond Cove Homeowners Association must agree to the following terms and conditions in order for the development to move forward:
  - DCHA will allow the double barracks to exist within the association, and as provided for in the declaration, as a condominium.
  - DCHA will waive the previous unpaid homeowner's assessments
  - Monthly assessments for all units within the Double Barracks will commence July 1, 2008 (projected completion date) or upon the issuance of a Certificate of Occupancy by the City of Portland, whichever comes first.
  - Any improvements required on the waste water beds and related equipment will be paid for, up front, by the developer. Subsequently, DCHA will reimburse the developer one half of the cost, up to a maximum of \$100,000, to be paid in equal installments over five years. This reimbursement will start upon the commencement of the monthly assessments. Both parties will work together during the construction phase of any bed upgrades to insure that the work complies with all regulations and is competitively priced.

# Requirements of Diamond Cove (Continued)

- DCHA will allow the use of the administrative building and gym to the Inn for functions at a mutually agreed upon fee.
- DCHA will allow the Inn to be responsible for all exterior repairs and maintenance of the double barracks, and will make a pro-rata adjustment to the monthly dues to reflect the value of the work..
- DCHA will cooperate with the developer with the issuance of local, state and federal permits.
- Developer will install a swimming pool for the use of the Inn's owners and guests on a portion of what currently is open space recreation area.
- Developer will operate its own van service to transport guests and owners around the island. The developer will need City approval to operate the same. The Inn also anticipates operating one or two stretch golf carts. The condominium unit owners will not be allowed to own or operate golf carts without approval by both the City of Portland and the DCHA Board.
- Since the Inn will provide its own transportation and operate its own swimming pool, there will be no rental fee assessed.
- Developer will abide by all Design Review requirements, pay all impact and barge landing fees.

# Possible Negatives of the Development

- There will be more people at Diamond Cove. For example, if all 22 units are completed, there will be 66 more beds on the island. Existing homeowners would be sharing beaches, tennis courts, parade ground, restaurant, general store, with the additional people.
- The net revenue gain could be reduced by up to \$20,000 per year for the first 5 years to pay for DCHA cost sharing of the waste water upgrade. This assumes that the upgrade would cost \$200,000 or more to construct, which it may or may not. DCHA share is capped at a total of \$100,000.
- DCHA will be releasing all liens on the properties for past assessments due. The current owner, The City of Portland, has indicated that it will not pay any such assessments.
- New assessments on the double barracks building commence upon completion of the project or July 1, 2008 whichever comes first.

# Relevant Facts

---

- Tear Down
- Both buildings are designated as historic and therefore protected structures. According to the Portland Code of Ordinances for historic buildings, the owner must preserve protected structures. "All structures located in a historic district shall be preserved against decay and deterioration by the owner who has legal custody and control. This includes preserving the foundation, floor supports, structural members, walls, partitions, ceilings, roofs, fireplaces, chimneys, and includes weather protection".
- For demolition, a Certificate of Hardship from the City of Portland Zoning Board of Appeals is needed. This requires that engineering studies be done, renovation estimates, 2 appraisals, market study, a public hearing where the applicant must make a clear case showing that a delay will result in undue hardship of a unique or exceptional character which could not have been avoided. Undue hardship does not include financial loss. If the condition of the structure is claimed to prevent reasonable use the applicant must prove that such condition is not the result of acts of neglect by the owner or his predecessors in title. As the City of Portland is the owner of the buildings only they can apply for a certificate of hardship. Early estimates of several years ago for a tear down were in the \$500,000 range.

## Relevant Facts (Continued)

- Tear Down (Continued):
  - Diamond Cove has few opportunities for additional revenue to offset rising costs. Once torn down the potential dues from the existing lots within these two buildings will be gone.
  - It is unlikely that the City will consider tearing down these buildings; a.) reduce potential for tax revenue, b.) historical preservation c.) the early estimates of several years ago for a tear down were in the \$500,000 range. Rather the City is more likely to transfer the buildings to a developer, qualified or not.
  - The movie theater and one of the officer's quarter's buildings were lost in recent years to fire and vandalism. The double barracks and hospital buildings are the two largest remaining structures of the original Ft. McKinley. A restoration will save a significant historical structure and maintain the character of Diamond Cove.

## Relevant Facts (Continued)

- Liability
  - DCHA is not, and never has been in the chain of title on these buildings. The City of Portland has claimed that it does not have physical possession, only “tax title”. While our attorney does not agree with the City’s legal theory, that it may not be held liable for its negligence in the operation or maintenance of these buildings, that does not necessarily prevent DCHA from being brought into a lawsuit were someone to be injured in one of these buildings. Cost of a legal defense would be significant.
- Leverage
  - Perhaps the most important element of this proposal is the fact that DCHA DOES NOT OWN THESE BUILDINGS AND THEREFORE HAS ABSOLUTELY NO SAY AS TO WHO THE CITY OF PORTLAND SELLS THEM TO. As we are not the owner of the buildings our goal is to influence, rather than control, what happens to these buildings.

# Conclusion

---

- The goal of the board of directors was to determine what could be done with these buildings that would be in the best interest of the Diamond Cove community. Recognizing our limitations -- we do not own the buildings and cannot control who they are sold to or the caliber and quality of the renovation, it is our belief that the development team and proposal achieve the goal you set.
  - ✓ It brings in new revenue up to 17% of our present total assessment.
  - ✓ It uses little of our infrastructure, is open 6 months (~~delete~~), and is fairly self sufficient.
  - ✓ The Inn's business model will attract guests who could be future buyers of property.
  - ✓ It will be professionally managed. The owner/developer is substantial and has a track record of operating quality projects. The owner's consultant knows Diamond Cove better than anyone else and therefore has less of a chance of not finishing the project.
  - ✓ We eliminate any potential liability related to someone getting hurt in one of these abandoned buildings.
  - ✓ We improve our relationship with the City by working together to make this successful. We increase the viability of the restaurant and the general store.



# Conclusion (Continued)

---

- In return, we will have to be willing to share some of our part of the island with an increased number of people, something Diamond Cove was originally designed to do.
- Having recently learned of the final details of the proposed project, the Board now feels it is the best option available to DCHA. It allows the homeowners to have meaningful input into a project which could improve the revenue stream and help maintain the existing infrastructure, help property values, have minimal impact on existing infrastructure and eliminate a potential eyesore and potentially dangerous situation which currently exists with the Double Barracks and the Hospital buildings.
- No one on the board has any personal financial investment or involvement in this development. You, the homeowners, will ultimately decide by your vote if you want to see these buildings developed as outlined. Again, the developer can still buy and develop these properties in a somewhat different fashion without our approval. Your affirmative vote will allow us some degree of influence over the final product.
- Our by-laws require that 2/3 of the home owners cast an affirmative vote for this to be approved. A **NON-VOTE IS RECORDED AS A NEGATIVE VOTE**. It is important that you participate in the voting so that a decision that is reflective of the community's true wishes is made.

Respectfully,

DCHA Board of Directors

Sec. 14-145.12. Other requirements.

Other requirements include the following:

(a) *Offstreet parking:* Off-street parking shall be required as provided in division 20 (off-street parking) of this article.

(b) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.

(c) *Storage of vehicles:* Only one (1) unregistered motor vehicle may be stored outside on the premises and not for a period exceeding thirty (30) days.

(Ord. No. 28-85, § 1, 7-15-85; Ord. No. 15-92, § 13, 6-15-92)

DIVISION 7.3 IR-3 ISLAND RESIDENTIAL ZONE

Sec. 14-145.13. Purpose.

\* The purpose of the IR-3 island residential zone is to allow for a planned unit development in a manner compatible with both the natural and built environment, which provides for adequate circulation and waterfront access, adequate water supply for private use and fire protection, and safe and clean disposal of solid and septic wastes. The following guidelines shall be considered, among others, in establishing an IR-3 zone:

- (a) An IR-3 zone should have a minimum land area of twenty (20) acres;
- (b) A site for an IR-3 zone should be able to accommodate a higher density of development by providing buffers from surrounding areas on a substantially sized parcel for which natural amenities are capable of being conserved in a development plan for the site;
- (c) IR-3 zones should not be established unless issues of municipal services, including infrastructure, education, and police and fire services and other municipal services can be appropriately and adequately addressed;

(d) The differences in scale and intensity of uses between existing development and the IR-3 zone, and the cumulative impact on the overall density of the island, should be mitigated by appropriate open space and buffer areas; and

\* (e) The development plan should have the capability of meeting the development review standards of section 14-145.16. See next page.

(Ord. No. 29-85, § 1, 7-15-85)

Sec. 14-145.14. Permitted uses.

The following uses are permitted in the IR-3 island residential zone:

- (a) Planned unit development, including:
  1. Single-family detached dwellings;
  2. Single-family attached dwellings provided that new construction shall be limited to no more than six (6) attached dwellings per building;
  3. Lodging houses, with more than two (2) but not more than nine (9) lodging rooms;
  4. Inns, provided that the total number of rooms does not exceed fifty (50);
  5. Restaurants;
  6. Retail businesses or services;
  7. Campgrounds, excluding recreation vehicles, licensed by the State of Maine Department of Human Services provided that:
    - a. No tent shall be located within seventy-five (75) feet of the perimeter of the site;
    - b. The land area of the site shall not be less than the equivalent of five thousand (5,000)

Sec. 14-145.15. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.  
(Ord. No. 29-85, § 1, 7-15-85)

\* Sec. 14-145.16. Development review.

↓  
In addition to other applicable requirements, no development shall occur nor shall any new use be established unless the planning board finds that the final development plan for the site is in compliance with the following development standards:

(a) *Transportation*: The development shall be designed primarily with a pedestrian orientation to minimize the use of and dependency on private motor vehicles. Appropriate areas on the site shall be designated, as necessary, for parking of common service vehicles, golf carts or bicycles to serve the transportation needs of residents and visitors. The internal circulation plan shall also be coordinated with the existing island street network to ensure adequate access for emergency and service vehicles.

A project construction plan shall be developed indicating the anticipated number and types of vehicles such as construction equipment, supply-delivery and service vehicles needed for undertaking the construction of the project. Documentation shall be provided as to the proposed transportation route such as roads, piers, beaches, sand bars and the impact of construction related activities on the routes.

The development shall not have a substantial adverse impact on the capacity of existing island docking facilities. The developer shall demonstrate that an adequate water transportation system, including docking facilities, exists or will be provided.

(b) *Solid waste*: Adequate provision for off-island solid waste disposal shall be demonstrated such that the impact on municipal solid waste disposal is minimized. A development shall incorporate methods such as the following to reduce the amount of solid waste generated by the project: compaction and

reduction in waste volume, recycling, incineration or baler system, and private collection and transfer to an off-island location. It shall be demonstrated that there will be no significant environmental impacts from the solid waste disposal system.

(c) *Sanitary waste*: All sanitary waste from the development shall be disposed of by a public sewer, private community sewer system providing at least secondary treatment, or subsurface sewerage system, in compliance with federal, state and local regulations. The developer shall demonstrate that the project will comply with all applicable federal, state and local water quality and groundwater standards.

(d) *Water*: The proposed development shall have sufficient water for the reasonably foreseeable needs of the development and shall not cause an unreasonable burden on existing water supply nor adversely affect groundwater resources. Unless the development is to be served entirely by public water and secondary treatment sewer systems, the determination of compliance with this provision shall be based upon one (1) or more comprehensive groundwater analyses and reports prepared by qualified professionals and including assessment of current groundwater aquifer conditions, the impact of the proposed development on the groundwater aquifer, and recommendations for mitigation of potential impacts caused by the development.

(e) *Shoreland areas*: The development shall preserve the natural features of the shoreland area by minimizing the disturbance of existing vegetation and slopes, avoiding development in areas subject to erosion and sedimentation, and conserving scenic views and vistas to and from the site.

(f) *Environmentally sensitive areas*: The development plan shall preserve significant resources of the site by integrating open space into the development plan and by conserving such features as scenic vistas, historic man-made or natural features, existing vegetation, wetland areas, shoreland areas, ground water, natural wildlife habitat, and recommended or registered State of Maine Critical Land Areas, as well as other environmentally sensitive areas.

(g) *Recreation and open space*: All open spaces on the site shall be functionally integrated into the development plan by

virtue of such features as passive and active recreational opportunities, accessibility to residents, preservation of natural site amenities and resources, orientation to achieve energy conservation or solar access, use as a buffer between housing clusters and to screen the development from surrounding areas.

(h) *Financial and technical capability:* The applicant shall demonstrate sufficient financial and technical capability for undertaking the proposed project. Financial capability shall include a cost estimate of the proposed improvements, proposed construction and permanent financing, and terms of sale or lease of dwellings and commercial space. Technical capacity shall include the experience and expertise of the developer in implementing projects of similar scope.

(i) *Environmental impact analysis:* The applicant shall develop an environmental impact analysis including an inventory of existing environmental conditions at the project site and in the surrounding area with an assessment of the development's probable impact upon the environment. The inventory shall include such resources as air, water quality, water supply, surface water and shoreline, geology, soils, topography, wildlife, botanical and aquatic, including rare and endangered species, historic, archeological and aesthetic. The analysis shall include the direct and cumulative adverse impacts of the project on these resources. The analysis shall also include what steps the applicant proposes to take to identify and minimize adverse environmental impacts during construction, management and use of the property and whether there are alternatives for the project which would decrease the impact of the development.

(j) *Development phasing:* If the project is to be completed in phases, the applicant shall indicate the schedule for completing and implementing infrastructure improvements as well as other improvements, agreements or services required for compliance with the development standards of this section, planned unit development standards, and site plan and subdivision review requirements.

(k) *Emergency services:* The development shall not place an unreasonable burden on the ability of the city to provide police, fire and other emergency services.



BK B 9 2 B P G 0 2 6 4

7/15/85

CONDITIONS AND RESTRICTIONS

The following conditions and restrictions are imposed by the City of Portland (the City) on Diamond Cove Associates (the Owner) as conditions of the rezoning of the property described on the map attached hereto (the Premises) from the R-2 Residential Zone to the IR-3 Island Residential Zone:

1. Development limited. The development, use and occupancy of the Premises shall be limited to one hundred thirty-four (134) dwelling units and other permitted uses, and uses accessory thereto. Except for the reconstruction, renovation and repair of existing buildings and structures, and the construction of minor additions and improvements thereto, there shall be no construction or development of any new principal building or structure on the Premises. All portions of the Premises identified on the map attached hereto as open space shall be dedicated and reserved as such in perpetuity.

2. Completion of development. The development of the Premises as aforesaid shall be substantially completed within three (3) years after the issuance of all licenses, permits and approvals required and requiring final action by any administrative agency, board or commission, including but not limited to subdivision, site plan and site location of development approvals, but not including building, plumbing, electrical or similar permits, which licenses, permits and approvals shall hereafter be diligently pursued; provided, however, that the time for performance hereunder shall be extended for the time during which performance is delayed by reasons wholly beyond the Owner's control, including but not limited to strikes, lock-outs, labor disputes, inability to procure materials, failure of power, riots, war, insurrection, administrative or judicial delay and similar reasons, but not including financial hardship or business conditions; provided, further, that the Planning Board may, after notice and hearing, extend the time for performance hereunder for up to one (1) additional year if it finds that substantial progress has been made toward completion, and that there is a reasonable likelihood of substantial completion within the time as extended.

3. Maintenance of streets, walks and landings. All streets and ways, walks and pedestrian rights of way, and landings, floats and docks on the Premises, including but not limited to those to which the public has a right of access, shall be kept reasonably safe and passable at all times, including but not limited to the off-season or winter months, and at the Owner's expense; provided, however, that the City may, from time to time, designate such areas as need not be kept clear of ice and snow when or where, in its opinion, the public health, safety and welfare do not require it; provided, further, that in the event that the Owner fails to perform any obligation hereunder, the City may, after giving actual notice to the Owner and a reasonable time to perform, enter upon the Premises, or any portion thereof, and take such reasonable steps, including

but not limited to the exercise of self-help, as to it may seem necessary or appropriate to perform the same, the cost of which shall be reimbursed in full by the Owner upon demand.

4. Maintenance of utilities. All utilities and related infrastructure and improvements on the Premises, including but not limited to water, power, communications, sewers and drains, surface drainage ways, street lights and hydrants, shall be kept fully operational and in good repair at all times, including but not limited to the off-season or winter months, and at the Owner's expense; provided, however, that in the event that the Owner fails to perform any obligation hereunder, the City may, after giving actual notice to the Owner and a reasonable time to perform, enter upon the Premises, or any portion thereof, and take such reasonable steps, including but not limited to the exercise of self-help, as to it may seem necessary or appropriate to perform the same, the cost of which shall be reimbursed in full by the Owner upon demand.

5. Disposal of sanitary waste. All sanitary waste generated on the Premises shall be collected and disposed of on the Premises by means of a community sewer and secondary treatment system which complies with all applicable federal, state and local regulations, and at the Owner's expense.

6. Disposal of solid waste. All solid waste generated on the Premises shall be collected and disposed of on the mainland or if, in the City's opinion, it would not create an unreasonable burden thereon, at a municipally-operated island solid waste disposal facility, in a manner which meets all applicable federal, state and local requirements, and at the Owner's expense.

7. Fire protection, public safety and emergency services. Before occupancy of the Premises, or any portion thereof, the Owner shall, at its own expense, provide to the City:

- (a) a fully equipped "Quint truck", so-called, or its equivalent, for fire protection purposes, which vehicle, whether new or used, shall conform to City specifications and be leased to the City under a written net lease-purchase agreement in a form mutually satisfactory to the parties and upon commercially reasonable terms, at the end of which lease term title to said vehicle shall be transferred to the City free and clear of all liens and encumbrances, and at no additional charge;
- (b) a fully equipped multi-purpose truck van, for public safety and emergency purposes, which vehicle, whether new or used, shall conform to City specifications and be leased to the City for its useful life under a written net lease agreement in a form mutually satisfactory to the parties and providing for, among other things, annual lease payments in the amount of one dollar (\$1.00); and



(c) a building or buildings, or portions thereof, suitably located on the Premises, for permanent maintenance and storage of said vehicles and related apparatus and equipment, and housing of at least two (2) City personnel associated therewith, which facility shall conform to City specifications and be leased to the City under a ninety-nine (99) year written net lease agreement in a form mutually satisfactory to the parties and providing for, among other things, annual lease payments in the amount of one dollar (\$1.00), and delivery of possession on a "turn-key" basis.

Upon the City's occupancy of said facility, the Owner shall, at its own expense, provide at all times thereafter a number, not to exceed two (2), of qualified private personnel equal to the number of City personnel then assigned thereto, which private personnel shall be on the Premises and available at all times on an on-call basis to assist said City personnel in the rendering of fire protection, public safety and emergency services on or to the Premises; provided, however, that nothing herein shall constitute any representation or commitment by the City to provide any particular level of staffing or services. Said private personnel shall be trained and equipped for such purposes by the City and at its expense, and shall be under the direction and supervision of authorized City personnel at all times while so engaged; provided, however, that in no case shall said private personnel be deemed agents or employees of the City for any purpose, including but not limited to workers' compensation, unemployment compensation, tort claims liability and collective bargaining; provided, further, that notwithstanding the foregoing, in the event that the City is held liable for any claim arising out of or relating to any actions of said private personnel, which actions were not pursuant to and consistent with the directions of authorized City personnel, the Owner shall indemnify and save forever harmless the City from and against any and all such claims.

B. Water transportation service. The Owner shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from and between the Portland waterfront and Diamond Cove via a suitable docking facility on the Premises and on a schedule to be established by the carrier based upon passenger demand; provided, however, that in the event that such service is or at any time becomes unavailable, the Owner shall, at its own expense, provide an equivalent alternative to such service, subject only to the approval thereof by the Public Utilities Commission, or such other regulatory authority having jurisdiction thereof.

9. Restrictions on motor vehicles. Except for vehicles used primarily for construction, maintenance, service and the common transportation of goods and passengers, and fire protection, public safety and emergency vehicles, no motor vehicles, as defined in 29 M.R.S.A. Section 1(7), but including snowmobiles, shall be operated or stored, temporarily or otherwise, on the Premises.

10. Applicability of other laws. The development, use and occupancy of the Premises shall be subject to all other applicable laws, ordinances, regulations and requirements of the City as they may from time to time exist, and neither these conditions or restrictions nor the performance of any obligation hereunder shall constitute compliance therewith or prevent the enforcement thereof, any violation of which shall also constitute a breach of these conditions and restrictions, any breach of which shall also constitute a violation of Chapter 14, Article III (Zoning) of the Portland City Code.

11. Successors bound. These conditions and restrictions shall bind the Owner, its successors and assigns, of or to the Premises, or any portion thereof or any interest therein, including but not limited to any security interest, and any person in possession or occupancy of the Premises, or any portion thereof, and shall inure to the benefit of and be enforceable by the City. The Owner shall, at its own expense, record a copy of these conditions and restrictions in the Cumberland County Registry of Deeds, and shall, by deed, covenant, declaration of condominium or other recorded or recordable instruments, as appropriate, ensure that these conditions and restrictions are enforceable by the City against all such successors, assigns and persons. Nothing herein shall be deemed to limit the Owner's right of alienability of the Premises, or any portion thereof, subject to these conditions and restrictions, which conditions and restrictions shall run with the land and be binding upon the Owner, its successors and assigns, as their interests may appear.

12. No reliance or estoppel. Nothing in these conditions or restrictions shall constitute any representation or commitment by the City to retain the zoning classification of the Premises, or shall entitle the Owner to rely thereon for any purpose, or shall estop the City from any future rezoning or exercise of other authority with respect to the Premises. Nothing herein shall be deemed to preclude the Owner from petitioning the City for any future rezoning of the Premises or other property in the vicinity thereof; provided, however, that nothing herein shall constitute any representation or commitment by the City to grant such a petition or otherwise act thereon.

13. Breach. In case of any breach of these conditions and restrictions, and except as otherwise hereinbefore provided, the City shall, after giving written notice to the Owner and a reasonable time to cure not to exceed six (6) months, refer the same to the Planning Board, which shall, after notice and hearing, make a recommendation to the City Council whether to rezone the Premises, or any portion thereof, which recommendation shall be advisory only.

14. Declaration of invalidity. In the event that these conditions and restrictions, or any portion thereof, are declared invalid for any reason by a court of competent jurisdiction, the City shall invoke the same procedure as hereinbefore provided for breach of these conditions and restrictions.

2-1-5

-5-

DX 892046026B

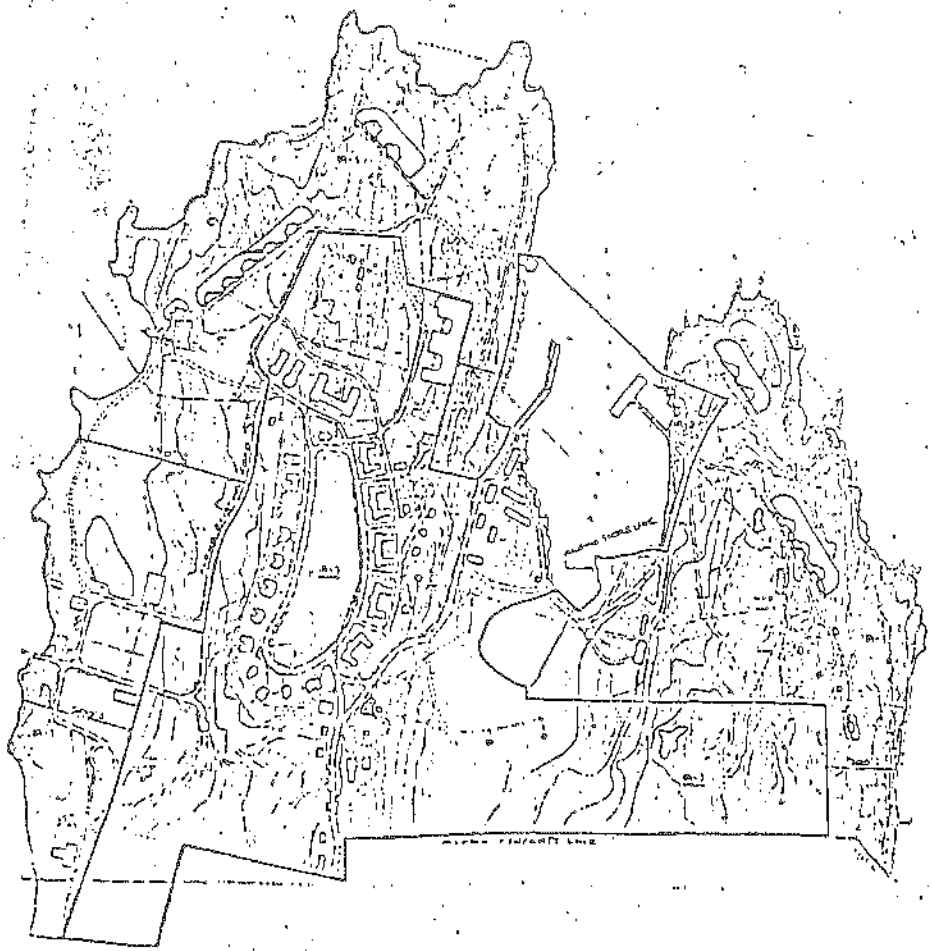
7/15/85

15. Remedies not impaired. No failure or delay by the City to enforce any of these conditions and restrictions shall impair any remedy available for breach hereof, or constitute a waiver of or acquiescence in any breach hereof, the remedies for which shall be cumulative.

BK 8928 PG 1269

7/15/85

FORT MCKINLEY PROPERTY ZONING MAP  
(GREAT DIAMOND ISLAND)



NOTE: SHORELAND ZONE LINE EXTENDS INLAND A DISTANCE  
OF 250 FEET FROM THE NORMAL HIGH WATER MARK  
OF THE BAYS, COVES, SOUNDS, INLETS AND OPEN  
WATERS OF CASCO BAY.  
(49)

2-I-7

8K8928960270

7/15/85

# Diamond Cove

GREAT DIAMOND ISLAND

PORTLAND, MAI

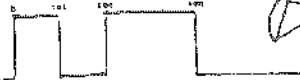
DEVELOPER: DICTAR ASSOCIATES

PORTLAND, MAI

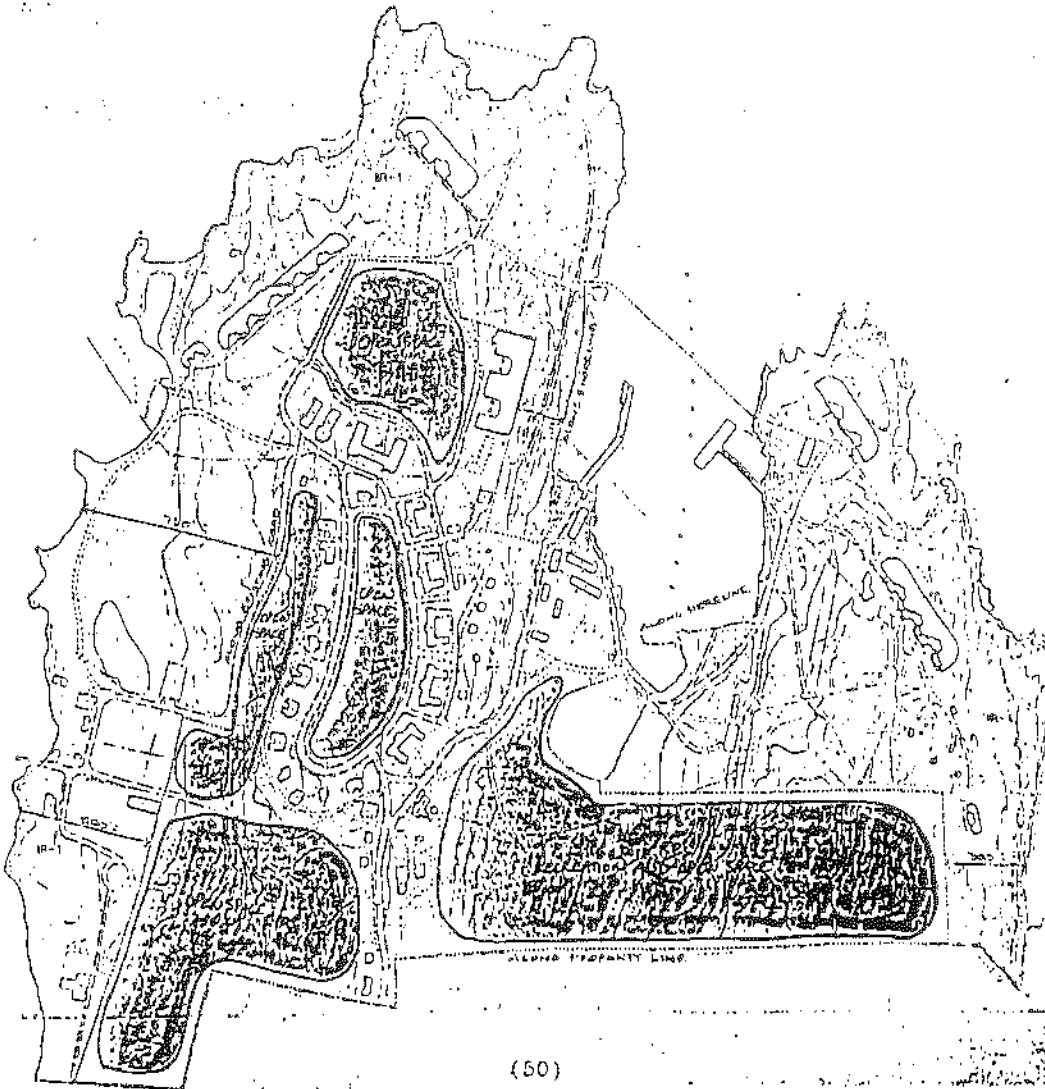


DEPARTMENT OF PLANNING, ECONOMIC AND DEVELOPMENT

PLANNING, ECONOMIC AND DEVELOPMENT



DEDICATED OPEN SPACE



(50)

612

AMENDMENT TO "MIDDLEBURY CITY  
CODE SECTION 14-59 (ZONING  
MAP) SECTION 14-59 (ZONING  
MAP) RE: COMPLETION  
REZONING OF 10. ACRES

IN THE CITY COUNCIL

JUNE 12, 1985

Given a first reading. Public hearing held.

JUNE 24 - Public hearing held. Councilor Smith moved, seconded McWilliams to table to July 15th afternoon City Council Meeting. passed 7 yeas.

JULY 15 - Removed from the table. Motion to replace with substitute amendment, passed, 8 yeas, and passed, as amended, 8 yeas.

Item #98 dated July 15, 1985 is relevant to this item. Third Reading For Issued Subsequent, it refers to this item.

SEAL

*Jane Durgin*

Attest: *Jane Durgin*  
City Clerk

SEAL

JANUARY 27, 1986

STATE OF MAINE  
CURBERLAND, SS.

Personally appeared the above-named Jane Durgin and  
acknowledged the foregoing instrument to be her free  
act and deed in her said capacity.

EMILY CONNOR

*Emily Connor*  
Mayor Curberland Comm. Ex. 10-12-85

RECEIVED  
MIDDLEBURY CITY CLERK'S OFFICE

1985 SEP 28 PH 3:32

CUMBERLAND COUNTY

*[Signature]*

BK8928PGD271

2-7-8

**From:** "william d robitzek" <wrobitzek@bermansimmons.com>  
**To:** <rwk@portlandmaine.gov>  
**Date:** 5/9/2008 9:48:19 AM  
**Subject:** Inn at Diamond Cove Project

Rick,

Attached are two documents. The Word document is the DIA's proposal for additional language regarding transportation and enforcement. There are good reasons, which I will be glad to share at the upcoming Workshop, for every element included in this proposal.

The scanned document is intended to correct a statement made by Ron Ward in his recent letter to you and a statement by Mr. Bateman that the so-called Audubon Agreement only affects Phase II. Ron apparently mistakenly sent you the wrong agreement as an attachment to his letter. I am including the Agreement and Amendment referred to at the last Workshop regarding the legal interests of third parties in various aspects of the Phase I development, including the issue of transportation.

If questions, please call my cell, 212-7709. I did not have Penny's email and would appreciate your forwarding this to her.

Thanks,  
Bill

William D. Robitzek  
Berman & Simmons  
129 Lisbon Street  
Lewiston, Maine 04240  
(207) 784-3576  
Assistant: Amy Christiansen x218

-----Original Message-----

From: Berman/Simmons [mailto:Berman/Simmons]  
Sent: Thursday, May 08, 2008 7:16 PM  
To: william d robitzek  
Subject: Scan

This scan has been sent from Konica4.

This message is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender at once.

**CC:** <mec@portlandmaine.gov>, "Ronald Ward" <rnw@dwmlaw.com>

AGREEMENT

This Agreement is entered into this 2nd day of March, 1989 by and between Diamond Cove Associates, of Portland, Maine, Maine Audubon Society, of Falmouth, Maine, Conservation Law Foundation, of Boston, Massachusetts, and Island Institute, of Rockland, Maine.

WHEREAS, Diamond Cove Associates (hereinafter "DCA") has proposed a residential and commercial development for property which it owns on the northerly portion of Great Diamond Island, Portland, Maine; said development consisting of 134 "condominium" units and 5 commercial and 2 recreational buildings (said "condominium" units, commercial and recreational buildings being Phase I of the project) and 70 single family house lots (said house lots being Phase II of the project); and

WHEREAS, DCA received Site Location of Development Law approval (hereinafter "Site Location Order") for Phase I of the project from the Maine Department of Environmental Protection (hereinafter "DEP") on December 10, 1986; and

WHEREAS, DCA received approval (hereinafter "Waste Discharge License") for the discharge of 40,000 g.p.d. of wastewater from Phase I of the project from the DEP on December 10, 1986; and

WHEREAS, DCA has applied to the DEP for approval of Phase II of the project under the Site Location of Development Law and said application has been tabled; and

WHEREAS, DCA has applied to the DEP for an amendment to its existing Waste Discharge License to provide for an incremental discharge of 8,500 g.p.d. of wastewater associated with Phase II of the project; and

WHEREAS, DCA has applied to the United States Environmental Protection Agency (hereinafter "EPA") for a National Pollutant Discharge Elimination System (hereinafter "NPDES") permit to serve the project; and

WHEREAS, the EPA has issued a draft NPDES permit, dated December 7, 1988, which draft permit would authorize a flow of 40,000 g.p.d. treated to a "zero fecal coliform" standard from Phase I of the project; and

WHEREAS, Maine Audubon Society, Conservation Law Foundation and Island Institute are concerned about the environmental impacts of the wastewater discharge from both Phase I and Phase II of the project and have opposed issuance of the NPDES permit, as drafted, as well as the 8,500 g.p.d. increment to the Waste Discharge License; and



WHEREAS, DCA desires to avoid the continued opposition of Maine Audubon Society, Conservation Law Foundation and Island Institute to the issuance of the NPDES permit and the 8,500 g.p.d. incremental wastewater discharge; and

WHEREAS, Maine Audubon Society and Island Institute are concerned about a variety of non-wastewater related issues associated with both Phase I and Phase II of the project including but not limited to the capacity of DCA to complete the project in a manner which will fit harmoniously into the environment without adverse impacts on the visual characteristics, historic values and unusual natural areas on the Island; and

WHEREAS, DCA desires to avoid the continued opposition of Maine Audubon Society and Island Institute to Phase II of the project as that opposition relates to some non-wastewater related issues.

NOW THEREFORE: In consideration of the mutual covenants and promises set forth in this Agreement, the parties agree as follows:

A. Wastewater Discharge

1. DCA will permanently withdraw its application for an 8,500 g.p.d. increment to its existing Waste Discharge License.
2. DCA will take all necessary steps to amend the draft NPDES permit, dated December 7, 1988, to provide that:
  - a. The pipe carrying wastewater from the treatment facility shall enter Pleasant Cove at the northerly end of Great Diamond Island and run northeasterly to the approximate center of the Great Diamond Island--Cow Island Channel and the point of discharge, provided that the point of discharge shall not be in less than 10 feet of water at mean low water.
  - b. The 40,000 g.p.d. flow shall be measured as a weekly average (280,000 gal. per week) rather than a monthly average. It is the intent of this provision to shorten the period of time over which the discharge is averaged. It is not intended that this change result in a reduction in the number of dwelling units and commercial establishments now permitted by the DEP as Phase I.

3. DCA will take all necessary steps to amend its DEP Waste Discharge License to provide that:

- a. The pipe carrying wastewater from the treatment facility shall enter Pleasant Cove at the northerly end of Great Diamond Island and run northeasterly to the approximate center of the Great Diamond Island--Cow Island Channel and the point of discharge, provided that the point of discharge shall not be in less than 10 feet of water at mean low water.
- b. The 40,000 g.p.d. flow shall be measured as a weekly average (280,000 gal. per week) rather than a monthly average. It is the intent of this provision to shorten the period of time over which the discharge is averaged. It is not intended that this change result in a reduction in the number of dwelling units and commercial establishments now permitted by the DEP as Phase I.
- c. The wastewater discharge limitation for fecal coliform bacteria shall be the same "zero fecal coliform" provided for in the NPDES permit.
- d. DCA shall be a guarantor of the Diamond Cove Homeowners' Association capital reserve account for repair, maintenance and reconstruction of the wastewater treatment facility. The dollar amount to be guaranteed in such account shall be as determined by the DEP. DCA's obligations as a guarantor shall extend for a period of 20 years from the date of completion of the wastewater treatment facility.

4. Independent of the Waste Discharge License, DCA shall be a guarantor of the Diamond Cove Homeowners' Association capital reserve account for repair, maintenance and reconstruction of the wastewater treatment facility. The dollar amount to be guaranteed in such account shall be as determined by the DEP. DCA's obligations as a guarantor shall extend for a period of 20 years from the date of completion of the wastewater treatment facility.

5. The total combined flow from Phase I and Phase II of the project shall not exceed 40,000 g.p.d. and DCA will not petition any state or federal agency to increase its wastewater discharge above 40,000 g.p.d. The combined flow from Phase I and Phase II of the project shall not exceed the "zero fecal coliform" level. This Agreement is not intended to limit DCA's rights to mix Phase I and Phase II wastewater provided that government approvals are obtained. Accordingly, DCA reserves

the right to amend its DEP waste discharge license and the NPDES permit, as drafted or as finally issued, to provide for comingling of Phase I and Phase II wastewater.

6. DCA will take all necessary steps to amend its Site Location Order to reflect the change in location of the waste discharge pipe to Pleasant Cove.

7. DCA will take all necessary steps to obtain a submerged lands lease from the Bureau of Public Lands of the Maine Department of Conservation and an Army Corps of Engineers permit for the discharge pipe location at Pleasant Cove.

8. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose final issuance of the draft NPDES permit, dated December 7, 1988, as above amended, and Maine Audubon Society and Conservation Law Foundation will inform EPA that they agree with issuance of the NPDES permit as amended. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose a State of Maine certification, under Section 401 of the Clean Water Act, that the NPDES permit, as above amended, will be in accordance with applicable state laws. Maine Audubon Society, Conservation Law Foundation and Island Institute will not appeal, administratively or to the courts, any aspect of the NPDES permit as above amended or the Section 401 certification.

9. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose the above amendments to the Site Location Order and the Waste Discharge License, and Maine Audubon Society and Conservation Law Foundation will inform DEP that they agree with issuance of the Order and the License as above amended. Maine Audubon Society, Conservation Law Foundation and Island Institute will not oppose issuance of the Bureau of Public Lands submerged lands lease and the Army Corps of Engineers permit for the relocated waste discharge pipe, and Maine Audubon Society and Conservation Law Foundation will inform the Bureau of Public Lands and the Corps of Engineers that they agree with issuance of the lease and the permit. Maine Audubon Society, Conservation Law Foundation and Island Institute will not appeal, administratively or to the courts, the amendments to the Site Location Order and the Waste Discharge License or issuance of the submerged lands lease or the Corps of Engineers permits.

10. The parties to this Agreement understand that processing by state and federal agencies of the above permits, amendments to permits, and leases may delay DCA's having a complete and finally licensed wastewater treatment facility. The parties also recognize that DCA intends to have a system for disposing of wastewater in place by June 1, 1989. Therefore, if it appears on April 1, 1989 that the necessary

governmental authorizations for the wastewater discharge will not be issued to DCA before June 1, 1989, Maine Audubon Society, Conservation Law Foundation and Island Institute agree not to oppose DCA in obtaining a temporary waiver (intended to last not more than 1 year) from the Maine Department of Human Services for the use of holding tanks. Maine Audubon Society and Conservation Law Foundation will inform the Department of Human Services that they agree with issuance of such a waiver. DCA agrees to use said holding tanks only until such time as it may legally discharge the wastewater.

11. In the event that the state and federal agencies, or any one of them, responsible for issuing the above described permits, amendments to permits and leases decline to do so and, as a consequence, the objectives of this Part A cannot be accomplished, then the obligations of the parties under this entire Agreement shall become null and void.

#### B. Cooperation in Replication

DCA will cooperate with Maine Audubon Society and Conservation Law Foundation in efforts they undertake to have other wastewater treatment facilities replicate the "zero fecal coliform" discharge system by making available to said organizations engineering and performance data for the DCA wastewater treatment facility.

#### C. Density

DCA agrees to limit the total number of single family dwellings, including "condominiums" and single family houses (house lots) but not including currently approved commercial and recreational uses, to not more than 173 and agrees to seek an amendment to its Site Location Order to reflect such a limitation. This Agreement is not intended to limit DCA's rights to determine the mix of "condominiums" and single family dwellings (house lots) provided that government approvals are obtained; provided, however, that DCA agrees that no single family dwellings will be constructed on lots 15, 33, 34, 35 and 36 on the Phase II plans on file at the DEP and further agrees to use the more westerly building window on lot 60 on said plans if said lot is developed. DCA agrees to take all necessary steps to obtain an amendment to its Site Location Order to reflect such a limitation and further agrees to place permanent deed restrictions on lots and other land areas which are not finally approved for development by the DEP or a court of competent jurisdiction. DCA agrees that not more than 40 dwelling units will use subsurface waste disposal.



#### F. Disclosures

1. DCA agrees to provide prospective purchasers of "condominium" units and single family house lots with copies of the Declaration of Covenants and Restrictions and copies of all local, state and federal licenses. DCA will seek to have such a condition placed in its Site Location Order.

#### G. Reservation of Rights

The Maine Audubon Society, the Conservation Law Foundation and Island Institute reserve the right to object to and appeal any and all issues that may arise during Site Location Law Phase II consideration by the DEP and BEP that are not expressly dealt with by the covenants in this Agreement.

#### H. Integration; Contract; Authorization

1. This Agreement contains all of the agreement of the parties, and any prior arrangements are hereby terminated and superseded.

2. The terms of this Agreement are contractual and not a mere recital.

3. The signatories hereto represent that they are duly authorized to sign this Agreement.

#### I. Interpretation and Remedies

The parties agree that the terms of this Agreement shall be interpreted according to Maine law and that an action to enforce this Agreement may be brought in a Maine court of competent jurisdiction.

The parties recognize that this Agreement requires actions with respect to third parties, such as government agencies, the Diamond Cove Homeowners Association and Great Diamond Island residents. The parties also recognize that breach of many of the terms of the Agreement will result in irrevocable harm, harm that is difficult to assess, and/or harm that is difficult to measure financially--this is particularly true with respect to environmental harm. Thus, the parties agree that in most instances specific performance is the appropriate remedy for any breach of this Agreement.

In some instances, however, specific performance may not be adequate to fully remedy the harm created by a breach. In this situation, in addition to the remedy of specific performance, a party harmed by the breach may seek other legal and equitable remedies.

If specific performance will not in any way remedy harm created by a breach, the parties agree that specific performance is not the appropriate remedy for breach. In this situation, the parties agree that a party harmed by the breach may seek other legal and equitable remedies.

The parties also agree that the breaching party will not challenge specific performance as a remedy for the breach, unless specific performance will in no way remedy the harm caused by the breach.

J. Confidentiality

The parties to this Agreement agree that the contents of this Agreement may be made public once it is signed.

K. Binding on Successors

This Agreement is binding on the successors in interest and assigns of the parties.

IN WITNESS WHEREOF, the undersigned have set their hands this 3rd day of March, 1989.

DIAMOND COVE ASSOCIATES

By: David Bateman  
David Bateman, Partner

MAINE AUDUBON SOCIETY

By: Karin R. Tilberg  
Karin Tilberg, Esq.  
Attorney

CONSERVATION LAW FOUNDATION

By: Richard S. Smart  
Attorney

ISLAND INSTITUTE

By: Philip Conkling  
Philip Conkling  
Executive Director

## AMENDMENTS TO AGREEMENT

The Agreement, dated March 2, 1989, by and between Diamond Cove Associates, Maine Audubon Society, Conservation Law Foundation and Island Institute is amended as follows:

P.1 ¶ 2: WHEREAS, Diamond Cove Associates (hereinafter "DCA") has proposed a residential and commercial development on approximately 198 acres of the property which it owns on the northerly portion of Great Diamond Island, Portland, Maine; said development consisting of 134 "condominium" units and 5 commercial and 2 recreational buildings (said "condominium" units, commercial and recreational buildings being Phase I of the project) and 70 single family house lots (said house lots being Phase II of the project); and

P.1 ¶ 9: WHEREAS, Maine Audubon Society, Conservation Law Foundation and Island Institute are concerned about the environmental impacts of the wastewater discharge from both Phase I and Phase II of the project and have opposed issuance of the NPDES permit, as drafted, as well as the 8,500 g.p.d. or any other increment to the Waste Discharge License; and

P.3 ¶ 3 c: The wastewater discharge limitation for fecal coliform bacteria shall be the same "zero fecal coliform" provided for in the December 7, 1988 draft NPDES permit.

P.3 ¶ d 2nd sent.: The dollar amount to be guaranteed in such account shall be sufficient to cover the repair, maintenance and reconstruction costs of the wastewater treatment facility adjusted for inflation as determined by the DEP.

P.4 ¶ 10: The parties to this Agreement understand that processing by state and federal agencies of the above permits, amendments to permits, and leases may delay DCA's having a complete and finally licensed wastewater treatment facility. DCA has stated that it needs a wastewater disposal system in place by June 1, 1989. Maine Audubon Society, Conservation Law Foundation and Island Institute agree not to oppose DCA in obtaining a temporary waiver from the Maine Department of Human Services for the use of holding tanks (such waiver to last not more than 1 year from its issuance, or until such time as it may legally discharge the wastewater, whichever is shorter). Maine Audubon Society and Conservation Law Foundation will inform the Department of Human Services that they agree with issuance of such a waiver.

P.5 ¶ 11: In the event that the 5 state and federal agencies (DEP, DHS, BPL, EPA and ACE mentioned above), or any one of them, responsible for issuing the above described permits, amendments to permits and leases decline to do so and, as a consequence, the permits of this Part A cannot be obtained,



then the obligations of the parties under this entire Agreement shall be null and void.

P.5 ¶ C. Density

DCA agrees to limit permanently the total number of single family dwellings, including "condominiums" and single family houses (house lots) but not including the currently approved 5 commercial and 2 recreational uses, to not more than 173 on the entire 198 acre DCA property. DCA shall take all necessary steps to amend to its Site Location Order and its Phase II Site Location application to reflect such a limitation; pending approval of such an amendment, DCA will abide by the limitation herein. This Agreement is not intended to limit DCA's rights to determine the mix of "condominiums" and single family dwellings (house lots) provided that government approvals are obtained; provided, however, that DCA agrees that no single family dwellings will be constructed on lots 15, 33, 34, 35 and 36 on the Phase II plans on file at the DEP and further agrees to use the more westerly building window on lot 60 on said plans if said lot is developed. DCA agrees to take all necessary steps to amend its Phase II Site Location application to reflect such a limitation and further agrees to place permanent deed restrictions on lots and other land areas which are not finally approved for development by the DEP or a court of competent jurisdiction. DCA agrees that not more than 40 dwelling units will use subsurface waste disposal.

P.6 ¶ D sub. ¶ 1. Motor Vehicles and Public Access

1. DCA agrees that no motor vehicles of any kind (automobiles, golfcarts, snowmobiles, ATV's etc.) shall pass from the DCA property to the southern part of the island. The only exceptions shall be fire equipment, ambulances, public safety vehicles and designated "taxis" (shuttle vans) which might transport persons from the Fort McKinley property to the pier at the southern end of the island. All construction vehicles, equipment and materials must be landed and off-loaded or loaded on DCA property. To the extent that this condition is not already a part of the Site Location Order--paragraph 11--DCA will take all necessary steps to amend the Order to reflect this limitation. Except as above provided, DCA agrees that automobiles will not be operated in the IR-1 or IR-3 zones. This provision shall become part of the Declaration of Covenants and Restrictions.

P.7 ¶ G. Reservation of Rights

The Maine Audubon Society, the Conservation Law Foundation and Island Institute reserve the right to object to and appeal

any and all issues that may arise during Phase II consideration by the DEP, BEP or other agencies that are not expressly agreed to in the covenants of this agreement.

IN WITNESS WHEREOF, the undersigned have set their hands on the dates below indicated.

3/10/89  
By: [Signature]  
DIAMOND COVE ASSOCIATES  
Richard Robson, Partner

By: [Signature]  
MAINE AUDUBON SOCIETY  
Karin Tilberg, Esq.  
Attorney

By: \_\_\_\_\_  
CONSERVATION LAW FOUNDATION  
Attorney

March 9, 1989  
By: [Signature]  
ISLAND INSTITUTE  
Philip Conkling  
Director

1361P

Whereas the Inn at Diamond Cove LLC has proposed the development of two dilapidated, but historically significant, buildings within the IR-3 zone on Great Diamond Island by the creation of residential condominiums units;

Whereas the ordinances for the IR-3 zone require a transportation plan "primarily with a pedestrian orientation";

Whereas Diamond Cove's use of motor vehicles is restricted by various legal requirements including but not limited to the zoning ordinance, the Conditional Rezoning amendments, DEP site reviews and an agreement with several public non-profit organizations;

Whereas the Diamond Island Association, which represents the residents of the cottage community on the southern side of the island, has raised concerns about the increased traffic burden which the proposed development could place on their road system, environment and culture;

Whereas Diamond Cove's current permissible use of the roads on the southern side of the island is a route traversing the length of the island, through the cottage community, to the state pier at the southern tip of Great Diamond Island, via Nancy Lane, a right of way granted to the City of Portland over private property;

Whereas Diamond Cove has its own pier virtually adjacent to the proposed development;

Whereas the developer's representative, David Bateman, at the public workshop session for this project stated that he "will guarantee that [the developer has] no intention" of using the pier at the southern end of the island "under any circumstances" because "it just can't work for us" and therefore the proposed amendment below is consistent with the developer's plans and intentions,

NOW THEREFORE, the Conditions and Restrictions for Diamond Cove are amended so as to add the following language to section 9(a):

Transportation Restriction. No person or entity ever associated with the properties (described as Buildings 19 and 46) which are the subject of this amendment, including but not limited to their construction, grounds, operations, occupation, management, ownership or use of shall use, operate or cause to be used a motor vehicle south of the boundaries of Diamond Cove, except in case of a fire or medical emergency. This amendment applies, but is not limited, to the use of vehicles for construction, maintenance, service and the common transportation of goods and passengers related to these properties. "Motor Vehicle" as used herein is as defined in 29-A M.R.S. §101 (42) but also includes snowmobiles and all-terrain vehicles.

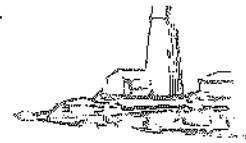
Notice to Purchasers and Renters. The above language shall be included in the covenants

and rules governing the units in the two properties covered by the amendment. The language shall also be made a part of any materials provided to any prospective purchaser, renter or repurchaser of any of the units.

Other Conditions and Restrictions. All other Conditions and Restrictions previously imposed by the City of Portland on the Diamond Cove development shall apply to these properties and their units, owners and users, including specifically, but without limitation, section 11, regarding the binding of all successors and assigns of the current petitioners, as well as the individual unit owners and users, to all those Conditions and Restrictions as well as to this Restriction.

Enforcement. If there is a separate condominium or owners association relating to either of the two properties, that association and the Diamond Cove Homeowners Association shall, in the first instance, be responsible to enforce this restriction. Violations of the above section, if reported to the City of Portland Code Enforcement Office, shall be prosecuted by it. Any person or entity found in violation of the above restriction shall be liable for a fine of \$500 for the first offense and \$1,000 for each subsequent offense. If more than three persons or entities associated with the properties which are subject to this amendment are found to have violated these restrictions, then the Planning Board may, upon presentation of a request by a property owner on Great Diamond Island, make a recommendation to the City Council to revoke that part of the amendment permitting the rental or use of the properties or any of the units as a hotel or inn. Any property owner on Great Diamond Island may file suit for any damages caused by the breach or for any appropriate equitable remedy, regardless of the actions of the Code Enforcement Office, Planning Board or City Council regarding a breach.

PO Box 94, Cliff Island, Maine 04019



To: Chair Tevanian, Members of the Portland Planning Board, and to  
Richard Knowland, Senior Planner  
Date: April 18, 2008  
Re: The Inn at Diamond Cove, LLC; Conditional Zoning Amendment  
Diamond Cove, Great Diamond Island

As one of the original signatories to the agreements governing the development of Fort McKinley, on Great Diamond Island, we are writing to express some concerns regarding the proposed conditional zoning amendment.

Simply stated, the process for restoring the Double Barracks and Hospital buildings to productive property generating real estate taxes and assessments can be expedited by the applicant's strict adherence to the conditions of the Audubon Agreements of 1985 that allowed any development of Fort McKinley to go forward. Those agreements run with the land and are binding upon the original owner, its successors and assigns.

Specifically, our concerns at this point include:

(1) Wastewater Treatment and Capacity

As Mr. Knowland states in his memo to the planning board, the applicant has submitted insufficient information to date to ensure that the proposed project will comply with standards. We look forward to further information.

(2) Transportation Services

- \* Transportation to and from the proposed development must be limited to and from the dock at Diamond Cove. This condition was part of the original agreement to protect the environment of Great Diamond Island, and it is an even more critical issue today than it was twenty years ago. The isthmus at the State Pier (southern end) has eroded, due partially to increased vehicular traffic. The proposed Inn should not be considering transportation to this dock at all for its guests/tenants or its service needs (laundry, food service, personnel, etc.).
- \* Mr. Ward, representing The Inn at Diamond Cove, LLC in his April 8 letter to Mr. Knowland, says that "the Inn will provide its own transportation facilities consistent with the 'transportation plan and golf cart amendments' for Diamond Cove." Transportation services at Diamond Cove are indeed a sensitive issue on Great Diamond Island, and for good reason. On August 16, 2004, the Portland City Council instructed Diamond Cove Homeowners' Association to submit a transportation plan within 60 days as a condition of the rezoning of IR3. Nearly four years have passed and the transportation plan which Mr. Ward references has not yet been approved by the City. In fact, it has not been submitted to or approved by any of the other signatories of the Audubon Agreements.

(3) Common Land and New Structures

The plan for the Inn includes new structures and the use of common land, both of which are not allowed under the Audubon Agreements. These conditions were laid down to protect the historical integrity of Fort McKinley and the environment of Great Diamond Island. The original owners gave up these development rights in order to gain permits for the rest of their project. The words "in perpetuity" have purpose and meaning.

We look forward to a successful solution for the two derelict properties at Diamond Cove. CBIDA applauds the efforts to restore these historic buildings, but expects the original agreements to be honored. We encourage you to keep the relevant and concerned parties informed: Audubon Society, Island Institute, CBIDA, and the Diamond Island Association.

Sincerely,

  
Robert Laughlin

President, Casco Bay Island Development Association  
grtdia@aol.com 207-799-9285

**Rick Knowland - The Inn at Diamond Cove**

**From:** "Condon, John" <jcondon@acadiabenefits.com>  
**To:** "rwk@portlandmaine.gov" <rwk@portlandmaine.gov>  
**Date:** 4/22/2008 8:21 AM  
**Subject:** The Inn at Diamond Cove  
**CC:** 'David Pendleton' <dop@portlandmaine.gov>

Good morning, have you had any discussions with the developer on Fire and Rescue issues ? The Great Diamond Island Volunteer Fire and Rescue Company members do not take shifts for coverage for Rescue. At any given point in time neither of the two EMT's may be on the island. We currently have 5 First Responders and they also may not be on the island. This means that in the event of a medical emergency, the response would be from the mainland via a Paramedic team coming from Portland on the Fireboat. Each year we meet with all of the residents and explain our services and the fact that they are an hour to Maine Medical. We also meet with the owners of Daimond's Edge to make certain they understand the response time. Thanks for your help. John Condon, Fire Captain

John M. Condon, CLU  
Acadia Benefits, Inc.  
111 Commercial St., 5th Flr.  
Portland, ME 04101  
P: (207) 761-2426 ext 228  
F: (207)761-0976  
[jcondon@acadiabenefits.com](mailto:jcondon@acadiabenefits.com)  
[www.acadiabenefits.com](http://www.acadiabenefits.com)

CONFIDENTIALITY NOTICE: This email message, including attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information or otherwise protected by law. Any unauthorized review, use, disclosure, distribution or forwarding of this message or it's attachments is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

**From:** <byoung@levetrockwood.com>  
**To:** <sh@ci.portland.me.us>, <rwk@portlandmaine.gov>  
**Date:** 5/13/2008 2:36:53 PM  
**Subject:** Conditional Zoning amendment proposed by The Inn at Diamond Cove LLC -Please include in the record for the Workshop on May 12, 2008

Dear Sirs:

I am a property owner at Diamond Cove (Unit 16D) and have reviewed the file for the Conditional Zoning Amendment proposed by The Inn at Diamond Cove LLC. I am writing to express certain questions and concerns that I believe need to be addressed before the proposal can be considered complete and appropriate for consideration on the merits by the Planning Board.

I would ask that this letter be read into the record of the Workshop on this proposed Amendment being conducted later this afternoon.

My concerns are as follows:

1. Wastewater Treatment.

DEP:

Michael Demarest's 5/8/08 email indicates that the DEP has some continuing work and concerns to address. In order for this application be considered to be complete and ready for Planning Board determination, shouldn't the DEP have an opportunity to do that?

Bedroom calculations:

The applicant's materials indicate that at least 8 of the units will have 5 to 7 queen size beds, so will be able to accommodate between 10 and 14 persons. Shouldn't the flow assumptions for these units be based on at least 5 bedrooms, given the bedding configurations? Perhaps the applicant could provide the occupancy rates and head counts that the applicant is using in its investor and financial materials - this might give a sense of appropriate assumptions as to usage?

Sufficiency of the analysis presented to date:

Is the DeLuca -Hoffman Associates April 29, 2008 letter sufficient for the Planning Board to make an informed decision on this matter? It appears to be an informal letter - doesn't a proposal of this scope require a full engineering study and professional opinion to be delivered?

Assumptions as to flow:

The applicant's engineering data appears to rely on information provided by the commercial interests (restaurant), which will have a commercial interest in the Hotel since they will be doing the food service. Shouldn't information be provided by an independent, uninterested party?

2. Open Space.

Planning Board conversion of Open Space to private use:

The Open Space designation was considered to be in perpetuity. What is the authority of the Planning Board to - by a simple zoning amendment proposed by the commercial developer - turn the Open Space over to the commercial developer for primary use of a swimming pool and commercial bar area?

Insufficiency of information as to what is being requested:

In order to make a decision on the Open Space, doesn't the Planning Board need a survey locating the boundaries of the parcel to be converted and showing the improvements to be built?

Otherwise, how do you know how much of the Open Space parcel is the Planning Board being asked to convert to a private use? The plans submitted do not delineate the exact location, nor do they describe precisely the scope of what the use will be, i.e. dimensions of the pool, improvements, one pool or multiple pools (wading), size. These are questions that should be answered.

Effect on neighbors and other residents of Diamond Cove:

The Planning Division's memo of May 9, 2008 indicates that the land now owned in common by the DCHA will be owned by the privately hotel but concludes that "it is unlikely this loss of land will adversely affect open space at Diamond Cove". In coming to this conclusion, what consideration was given to (i) the effect on the adjacent neighbors and other residents of Diamond Cove that turning an unspecified amount of Open Space into a pool for a 44 room hotel and cabana, and (ii) whether turning this Open Space into private land with a pool and cabana is consistent with the overall original development plan?

Uses of the "cabana".

What will be its dimensions? Will it contain food cooking facilities? Will it serve alcoholic beverages? Is a liquor license required? Will there be restroom facilities? Will this constitute a separate commercial property? The applicant should provide information responsive to these questions before the Planning Board can make an informed decision.

### 3. Transportation.

To date, the applicant has been unclear about its commitment in terms of intra- island transportation, a particularly sensitive topic for all of Great Diamond Island. Diamond Island Association and Casco Bay Island Development Association, Inc. have expressed concerns about this. Shouldn't this topic be resolved among the various parties and a consensus reached before this project can be considered in a meaningful way? Otherwise, won't the Planning Board be putting the entire Island back in the uncertain position that it was a few years ago?

### 4. Parking.

The applicant has submitted a letter from the General Manager of the



Portland Harbor Hotel that it will make parking available to Diamond Cove Hotel guests on the mainland, saying that it has excess parking available. How will this be monitored and enforced?

What happens, however, if the Harbor Hotel no longer has excess parking? Will the applicant provide an easement for parking on the mainland property to be recorded in the land records?

A predecessor related party made a similar promise for mainland parking in the original development 20 years ago, but it was never actually delivered. Should the Planning Board request a firmer commitment, particularly in view of the shortage of parking around the Ferry Terminal?

If no such commitment is received, has an analysis been done of the effects on the Casco Bay Lines Parking Garage, which currently has a waiting list in excess of 150 island families?

5. Commercial uses to be located at the Cove. The original plan was for there only to be 5 commercial units, to be centrally located around the actual cove. From a planning standpoint, is there a basis for now adding a new, high intensity commercial use on the Parade Ground itself?

What is the exact scope of the commercial use that the applicant is proposing, will there be dining services provided at the hotel, at the pool, if so, for what meals? Will there also be a bar? If so, will the dining facility be open for public functions?

6. Safety.

With a public hotel on the island, how will the City provide fire, police and EMT coverage for the public staying at the hotel?

7. Financing.

The applicant has provided a letter from TDNorth that just states that it would "welcome the opportunity to discuss the possibility of financing the project . . . at some point in the future." No specifics are given as to the size of the loan, the term, conditions to financing. This is far from an actual expression of interest in providing specific financing for the project and the Board should require further information as to the status of the applicant's financing in order to assess commercial viability before considering the requested zoning amendments.

Thank you very much for your time and patience.

Very truly yours,

Barbara A. Young



DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE HOUSE STATION 17                      AUGUSTA, MAINE 04333

BOARD ORDER  
IN THE MATTER OF

December 10, 1986

DIAMOND COVE ASSOCIATES  
Portland, Maine  
DIAMOND COVE - PHASE I  
#L-013160-87/03-A-N

) SITE LOCATION ORDER  
)  
)  
) FINDINGS OF FACT AND ORDER

Pursuant to the provision of Title 38, M.R.S.A., Sections 474 and 483, and Section 401 of the Federal Water Pollution Control Act, the Board of Environmental Protection has considered the application of DIAMOND COVE ASSOCIATES with its supportive data, staff summary, agency review comments, comments from the public, public hearing transcript, and other related materials on file and finds the following facts:

1. Title, Right or Interest

Diamond Cove Associates (the "applicant") owns a 193.4 acre parcel of land on Great Diamond Island in Casco Bay. Great Diamond is a 349-acre island which is part of the City of Portland. The property is described in a deed dated 17 April 1984 and recorded in Book 6424, Pages 277 to 281, Cumberland County Registry of Deeds.

2. Project Description

The applicant proposes to renovate 44 buildings located on the property. 36 buildings will be converted to 134 housing units; 5 will be converted to commercial uses; 2 will be rehabilitated for recreational use; and one will be renovated for maintenance and security uses. In addition, a pier will be reconstructed to provide access to the site, an in-ground swimming pool will be installed, 2 tennis courts will be refurbished and an athletic field will be cleared and recultivated. The buildings, pier, pool, tennis courts and athletic field are depicted on a plan dated 10/25/85 (revised 11/20/85, 1/21/86, and 10/14/86) and entitled "Diamond Cove, Great Diamond Island, Portland, Maine, Phase I Development" (hereinafter "Site Plan").

The proposed construction will occur primarily within that portion of the property which has been zoned Island Residential 3 (IR-3) by the City of Portland. The IR-3 zone occupies about 91 acres of the property and is designated "Lot 3" on the Site plan. The remainder of the site, about 102 acres, is zoned Island Residential 1 (IR-1). The IR-1 zone is designated "Lot 1" and "Lot 3" on the Site Plan. IR-1 is a low density residential zone. Mixed residential and commercial uses are permitted within an IR-3 zone.

The applicant is not now seeking approval for development in the IR-1 zone except for that development which is necessary for support of the IR-3 zone construction, i.e., construction of a chlorine contact shed and the placement and maintenance of sewer lines. However, the applicant may seek approval in the future for development of an undetermined number of single family house lots within the IR-1 areas.

December 10, 1986

DIAMOND COVE ASSOCIATES  
Portland, Maine  
DIAMOND COVE  
#L-013160-87/03-A-N

19 SITE LOCATION ORDER  
)  
)  
) FINDINGS OF FACT AND ORDER

8. A plan for management and protection of the old growth stand of trees referred to in Finding 17 shall be submitted to by the Department by January 31, 1987. The plan shall be developed by a duly qualified forester. The plan shall define the limits of the stand including the edge vegetation necessary for its preservation, and shall specify the requirements for continued preservation management of the stand. Relevant standards for the preservation of distinguished timber stands, requirements for windfirmness, and stand definition shall be used to delineate the stand. The plan shall include appropriate limitations on pruning and tree removal to ensure that the stand will continue to screen the fort buildings when viewed from Casco Bay and the mainland. No road construction, sewer or water line installation or repair, or tree clearing shall occur until the plan is approved by the Department.

The applicant and the Diamond Cove Homeowners Association shall maintain the old growth trees in accordance with the approved plan. The Landscape Plan shall be revised to conform with the requirements of the approved plan.

9. The applicant and the Diamond Cove Homeowners Association shall implement the recommendations of the Department of Inland Fisheries and Wildlife as set forth in Finding 19.
10. Prior to the sale or lease of the first housing unit, Section 7.3 of the General Declaration of Covenants and Restrictions shall be amended to specify that the Association:
- a) will maintain the old-growth stand of pine and hemlock in accordance with the plan approved by the Department of Environmental Protection; and
  - b) will maintain all other common open space, other than the old-growth stand of hemlock and pine, in accordance with the recommendations of the Maine Department of Inland Fisheries and Wildlife as set forth in Finding 19.
11. All power generating, storing and transferring facilities including pump stations shall be investigated and analyzed in accordance with the recommendations of the BOHMC (see Finding 9D of this Order). No housing unit shall be sold or leased until a report of the investigation, including remedial action if necessary, is submitted to and approved by the Commissioner.

December 10, 1986

DIAMOND COVE ASSOCIATES  
Portland, Maine  
DIAMOND COVE  
#L-013160-87/03-A-N

15 SITE LOCATION ORDER  
)  
)  
) FINDINGS OF FACT AND ORDER

The permissible pruning and tree removal, if undertaken, will reduce the value of the old-growth stand as a visual screen and will expose the parade buildings to view from Casco Bay and the mainland. If the visual screen provided by the stand is maintained, the project will have a minimal impact on the scenic character of Casco Bay. The buildings proposed for renovation are clustered at the interior uplands of the project site. No shoreline development, other than reconstruction of a pier in Diamond Cove (see Finding 2!) is proposed.

#### 19. Wildlife and Fisheries

The applicant will obtain a Waste Discharge License to discharge effluent from the proposed sewage treatment system into Casco Bay. The impact of the effluent on the fisheries of Casco Bay is a subject of the Waste Discharge License.

The project site does not contain an important deer wintering area. However, the proposed development will result in the loss of more than 160 acres of habitat that is currently meeting the year-round requirements of an unknown number of deer, and will thereby reduce the capacity of Great Diamond Island to support deer.

To offset the deer habitat losses resulting from the project, the Maine Department of Inland Fisheries and Wildlife recommends:

- 1) The area designated as open space on the Recording Plat be retained in its natural state with no new structures located there. This open space includes and is adjacent to, winter deer cover and will serve as a buffer between it and adjacent developed land.
- 2) Within this open space, maintain oak and apple trees for food value and hemlock and other softwood for shelter values. Since this area is adjacent to winter cover, any activity benefiting deer would have its greatest positive impact here.
- 3) Include Ladino clover in any seed mixture used to reclaim field area. This will provide a supplemental source of deer food, particularly during spring and fall.
- 4) Remove sections of existing fence to allow better deer access to open space area.
- 5) Leave existing snags which provide nesting cavities for birds.
- 6) In developed areas requiring landscaping include such species as crab apple, honey suckle and/or dogwoods in the planting scheme. Not only will these shrubs provide color but also fruits readily eaten by many birds.

**From:** Rick Knowland  
**To:** Gary Wood  
**Date:** 1/30/03 4:55PM  
**Subject:** Motor vehicle restrictions On Great Diamond Island

Gary, I have read the letter dated 1-21-03 from John Bannon to Jim Cloutier concerning motor vehicle restrictions. As someone who was in the middle of this issue during the Diamond Cove review during the 1980s, Mr. Bannon's letter for the most part is on the mark. There are a variety of regulatory issues specifically related to the Diamond Cove development approval that would not be "undone" if the City Council were to pass an ordinance related to this issue.

I can say without hesitation that if the motor vehicle restriction had not been imposed on this development, Dictar Assoc. (the developer) would not have received City and DEP approval for this development. This restriction was fundamental to protecting the character and environment of the island.

**CC:** Alex Jaegerman

November 15, 2006

Lee D. Urban, Esq.  
Director of the Planning and Development Department  
City of Portland  
389 Congress Street  
Portland, Maine 04101

Peter S. Plumb  
John C. Lightbody  
Thomas C. Newman  
John C. Bannon  
Susan D. Thomas  
Drew A. Anderson  
Richard L. O'Meara  
Christopher B. Branson  
Michael D. Traister  
Barbara L. Goodwin  
Timothy H. Boulette  
John B. Shumadine  
Sarah A. McDaniel  
Thomas L. Douglas  
Staci K. Converse  
Kelly W. McDonald  
Nicole L. Bradick

RE: Traffic Management Plan for Diamond Cove at Great Diamond Island

Dear Lee:

I represent Tony and Judy Savastano, who own property abutting Nancy Lane on Great Diamond Island. The purpose of this letter is to convey to you and the Planning Department the Savastanos' concerns about the interaction between the Diamond Cove Traffic Management Plan, past approvals of the Diamond Cove project, and certain matters currently being discussed before the Casco Bay Island Transit District.

Great Diamond Island's representative on the CBITD board has been urging CBITD to reroute ferry traffic during the winter and spring so as to add two additional stops per week at the State Pier on the southerly side of Great Diamond Island. That representative happens to reside within Diamond Cove. CBITD is scheduled to vote on that measure within a week. Those two additional ferry stops will add two more round trips per week by the Diamond Cove "common transportation vehicles" between the Cove and the State Pier. The only possible route for those round-trips is Nancy Lane.

Because the traveled way of Nancy Lane passes within a few feet of the Savastanos' home, they are the persons most affected by increased vehicular traffic on Nancy Lane. Moreover, the Savastanos' property includes (a) the fee beneath all portions of Nancy Lane from the State Pier to roughly the intersection of Nancy Lane and Nicholas Street; and (b) the fee to the westerly half of Nancy Lane from the aforementioned intersection to a point about 170' northwest of the intersection of Nancy Lane and Sunset Avenue Extension. Although the City properly laid out Nancy Lane in 1960, at that time the City took only a right-of-way *easement*, not the *fee* interest in the land underlying the easement. *City of Rockland v. Johnson*, 267 A.2d 382 (Me. 1970). Because the Savastanos legally own the road bed of Nancy Lane, the City must take into consideration potential harm to the Savastanos' fee ownership of the roadbed when considering whether the proposed Diamond Cove Traffic

Of Counsel:

Peter L. Murray  
Amy M. Sneider  
Barbara T. Schneider

E. Stephen Murray  
(1941-2001)

November 15, 2006

Page 2

Management Plan will, in the near and distant future, adequately control traffic by "common transportation vehicles" over Nancy Lane.

Although the addition of two round trips per week by the Cove's common transportation vehicles is significant by itself, what concerns the Savastanos even more is whether seemingly unrelated, incremental changes to the ferry service to the Diamond Cove pier will ultimately shift most or all of the ferry stops to the State Pier. Mounting numbers of round-trips by the Cove's "common transportation vehicles" over Nancy Lane to reach the State Pier would cause substantial harm to the Savastanos. In contrast, shifting all ferry service to the State Pier would be of considerable benefit to the Diamond Cove Homeowners' Association (hereafter the "DCHA"), because to do so would effectively relieve the DCHA from having to fund expensive maintenance of, and repairs to, the Diamond Cove pier.

My clients were aware of the harm potentially caused by declining use of the Diamond Cove pier when the City was drafting the 2004 Amendment to the Conditional Rezoning Agreement for Diamond Cove. During the drafting process, I sent to the City the following proposed condition: "DCHA shall maintain in safe and useable condition the present ferry dock servicing Diamond Cove." The City rejected that proposed condition, perhaps believing that the scenario I have been describing in this letter would never materialize. Unfortunately, it *has* materialized, only two years after the Council adopted the 2004 Amendment.

The Savastanos have two major objections to traffic on Nancy Lane caused by increasing numbers of round trips by "common transportation vehicles" between the Cove and the State Pier.

First, the Savastanos are concerned that that traffic will threaten not only their privacy, but the physical integrity of their home and the roadbed of Nancy Lane -- both of which they own in fee. In the past, the City has been relatively slow to repair and maintain Nancy Lane, which often becomes deeply rutted and pot-holed by vehicular traffic, particularly after significant rains. Those conditions raise the risk of accidents near the Savastanos' home and lead to severe erosion of the roadbed. Although the Savastanos have recently had productive discussions with Mike Bobinsky of the Public Works Department about maintenance of Nancy Lane, the control of traffic impacts on Nancy Lane is not within the jurisdiction of the Public Works Department. The City's Planning Department itself must develop a coherent strategy for

limiting traffic by "common transportation vehicles" on Nancy Lane, and cannot merely rely upon Public Works' ability to make ad hoc repairs to the road.

Second, the situation described in this letter demonstrates the unwisdom of allowing the 2004 Rezoning Amendment effectively to supersede the conditions under which the Diamond Cove project was allowed to be developed in the first place.

For example, the Maine DEP granted a Site Plan of Development Act approval for Phase I of the Diamond Cove development (the condominiums) based upon the developers' representation that they would reconstruct and thereafter maintain the central pier at Diamond Cove. See DEP Site Location Order dated December 19, 1986, #L-013160-87/03-A-N, §§ 11(B), 21. The DEP repeated its requirement of ensuring adequate ferry service to the Diamond Cove pier in its order approving Phase II of the Diamond Cove development (the single-family house lots). See DEP Site Location Order dated June 25, 1991, #L-013160-L3-G-N, § 7(B).

Likewise, Condition 8 of the City's original Order approving the Conditional Rezoning of the Fort McKinley property, dated July 15, 1985, required the developer either to (a) arrange for year-round CBITD ferry service sufficient to meet the needs of Diamond Cove residents; or, if such ferry service were unavailable, (b) provide an equivalent water transportation service *at its own expense*. The 1985 Order did not allow the developer or its successors to shift, to the State Pier and the residents of the southerly side of the island, Diamond Cove's responsibility to provide adequate water transportation for residents of the Cove. Nothing in the 2004 Amendment even *purported* to modify the Cove's responsibility to reconstruct and maintain the Diamond Cove pier and to procure, at its sole expense, ferry service sufficient for the needs of Cove residents.

Accordingly, it is critical for the City, when evaluating the proposed Diamond Cove Traffic Management Plan, to consider not only the present circumstances of the Island, but also the long-term consequences of allowing the State Pier gradually to become the primary, and ultimately the exclusive, means for Diamond Cove residents to obtain water transportation. Such a result would subject residents of the southerly side of the Island to impacts from the Cove's "common transportation vehicles" far beyond anyone's



November 15, 2006

Page 4

contemplation either when the City approved the original rezoning of Fort McKinley in 1985, or when it amended that rezoning in 2004.

In sum, the Savastanos ask the City to do two things. First, the City must insist that the Traffic Management Plan include a condition similar to the one I had proposed back in 2004: namely, that DCHA shall have a perpetual duty to maintain in safe and useable condition the present ferry dock servicing Diamond Cove. Second, the City must strictly enforce Diamond Cove's *existing* responsibility to provide water transportation services sufficient to meet the needs of Diamond Cove residents, at the DCHA's own expense.

Thank you for your consideration of this letter. I know that you will give it your characteristically thoughtful attention.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Bannon", with a long horizontal flourish extending to the right.

John C. Bannon

JCB/dmw

cc: Tony and Judy Savastano

Ultimately there is some likelihood that the City would not be interested in accepting the streets given the ensuing responsibility for providing snow plowing services and other long term maintenance responsibilities. Should the developer petition the City for acceptance of the street, it is likely that the City would require that the streets be paved, that a building be required to house additional equipment needed to serve the project and an underground storage tank be provided for fuel (see Attachment D).

The development will have a pedestrian orientation since the use and storage of automobiles is for practical purposes prohibited. A condition of the IR-3 rezoning is that the operation, use and storage of private automobiles is not allowed in the IR-3 zoned area. As the main pier at Diamond Cove is in the IR-3 zone, autos could not travel through the IR-3 to the IR-1 zone. A shuttle service will be available from the pier to take the residents to their dwellings. Parking areas for golf carts at Diamond Cove and the southerly border (IR-3) of the property are shown on the plan. Recently the developer indicated to staff that private automobiles would in fact be excluded from the IR-1 zone.

The Board may want to consider as a condition of approval, a requirement that private automobiles not be permitted given the pedestrian orientation of the IR-3 and the remainder of the island. Theoretically private automobiles could land at the southerly ferry landing (other side of the island) and drive to Willis Street and into the IR-1 portion of the development.

The primary water transportation route will be from Diamond Cove eliminating possible conflicts with the ferry landing at the southerly end of the island. A condition of IR-3 rezoning was for the applicant to provide for ferry service at Diamond Cove. The Casco Bay Ferry Transit District has previously indicated their interest in serving the development.

A condition of D.E.P. approval was that the developer make 67 mainland parking spaces available to the residences of the first phase. In addition 27 mainland parking spaces are to be made available for the parking demand associated with the commercial uses at Diamond Cove. The parking spaces are to be located in the downtown area.

The applicant has submitted a traffic and parking study for the project conducted by T.Y. Lin International/Hunter-Ballew Associates (cover letter dated 06-01-87, see Attachment F). The report indicates that the typical peak weekday parking demand during the summer months is 70 spaces, while the peak weekend demand during the summer is estimated at 84 spaces. The consultant has conducted a survey of several downtown parking garages and indicates that sufficient off-street parking is available in the general vicinity of the waterfront to meet the

DRUMMOND WOODSUM PLIMPTON & MACMAHON, P.A.  
ATTORNEYS AT LAW  
500 MAINE SAVINGS PLAZA  
PORTLAND, MAINE 04101

DANIEL T. DRUMMOND, JR.  
HAROLD E. WOODSUM, JR.  
DAVID PLIMPTON  
HUGH G. E. MACMAHON  
JOHN A. GRAUSTEIN  
JOSEPH L. DELAFIELD III  
S. JAMES LEVIS, JR.  
DANIEL AMORY  
ROBERT E. HIRSHON  
HARRY R. PRINGLE  
RICHARD A. SPENCER  
THOMAS M. ALLEN  
RICHARD A. CARRIUOLO

RONALD N. WARD  
JAY S. BLUMENKOPF  
JOHN S. KAMINSKI  
KATHLEEN BARRY  
GEORGE A. CARMEL  
CAROLYN B. HULL  
BETH CANTARA RICHARDSON  
MARY T. ESPOSITO  
WILLIAM L. PLOUFFE  
JERROL A. CROUTER  
KEITH C. JONES  
WILLIAM R. BRITTON, JR.\*

AREA CODE 207  
772-1941

June 24, 1985

\*ADMITTED IN NEW YORK ONLY

HAND DELIVERED

David Lourie, Esq.  
Corporation Counsel  
Portland City Hall  
389 Congress Street  
Portland, ME 04101

Re: Rezoning of Portland, Maine Islands  
Ft. McKinley, Great Diamond Island

Dear Mr. Lourie:

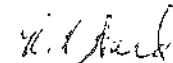
I write on behalf of Dictar Associates (Developer) and Diamond Cove Associates (Land Owner) to provide you assurances regarding our intentions with respect to the above-captioned matter.

First, please consider this letter our request that the Portland City Council ("Council") approve the proposed rezoning of the Ft. McKinley site on Great Diamond Island as finally approved by the Portland Planning Board ("Board") on June 4, 1985. Second, please be advised that we support and will adhere to the conditions imposed upon us and the Ft. McKinley site. Finally, please be advised that we will initiate no action against the City, or subdivision thereof, challenging either the conditional zoning process or the conditions.

The representations set forth above, of course, are conditional upon the Council approving the zoning "package" forwarded to it by the Board. If the Council elects not to adopt the current proposal, or if we are subject to a challenge by another interested party, we must reserve the right to respond as necessary to protect our rights.

We urge that the Council continue with the conditional rezoning process and approve the reasoned conclusions reached by the Board.

Sincerely,



Ronald N. Ward  
Attorney for Dictar Associates, Inc.  
and Diamond Cove Associates

RNW/dja

From: Demarest, Michael <Michael.Demarest@maine.gov>

To: pgleason@aol.com

Cc: RWK@portlandmaine.gov; joe@delucahoffman.com; Richardson, Marybeth <Marybeth.Richardson@maine.gov>; Albert Frick <afa@maine.rr.com>

Subject: Questions about the redevelopment of the Barracks, Gteat Diamond Island;

Date: Mon, 5 May 2008 10:41 am

Attachments: 6931(DiamondCove)Barracks2ndFIPlan\_040208.pdf (245K), 6931(DiamondCove) Barracks1stFIPlan\_040208.pdf (421K), 6931(DiamondCove)Barracks3rdFIPlan\_040208.pdf (164K), 6931 (DiamondIsl\_McKinley)DeLucaHoffman\_SewerFlows\_080207.pdf (8K)



Dear Ms. Gleason:

I hope the attached information helps. As was discussed, there are only three options for the Barracks: Publicly Operated Treatment Works (POTW), a subsurface wastewater disposal system or the existing overboard discharge (OBD).

To connect to the OBD, the developer has to prove that there is not a subsurface option, that the Barracks was continuously authorized within their DEP site license, and that the development will not push them over the discharge limit (estimated design flow or actual). In order for the actual flows not to exceed the limit, the licensee has to address the existing I/I problem that already is causing overages during the spring melt and heavy precipitation events.

I doubt a POTW is a viable option in the current economy.

Although Albert Frick did do a site evaluation in 2004, it was for the entire development. It occurs to me that the Barracks may be small enough to have its own subsurface system because two sand filters were never constructed, but I don't think I have enough information on the soils at this particular location. I suspect they may not be suitable, but that is a Licensed Site Evaluator / P.E.'s job

I have not received a determination on whether the Barracks redevelopment has continuously been authorized in the site license, but am trying to figure that out.

I will forward any specific findings as soon as I can.



# DIAMOND COVE HOMEOWNERS ASSOCIATION

Equipment list - 3/19/2008

## EQUIPMENT

## APPROXIMATE VALUE

2008 Chevy pick up with Plow	\$28,000.00
2004 Ford Dump Truck-F450 with V-Plow	\$30,000.00
2 1/2 yard Stainless Steel Sander	\$2,500.00
1999 Chevy Pick Up with plow	\$5,000.00
1999 BMC Bus	\$8,000.00
2002 Chevy Bus	\$10,000.00
Kubota Tractor-with snowthrower & wood chipper	\$28,000.00
2003 Walker riding mower with 48" deck (with 62" deck for large area mowing)	\$7,000.00
2007 Ferris mower with 62" deck	\$8,500.00
1999 Chevy cargo van	\$3,000.00
New 300 gal. gas tank with 2004 Onyx trailer	\$2,700.00
3 Honda 5000 wats generators	\$3,000.00
10 KW Generator	\$15,000.00
John Deer 40 KW Portable Generator	\$20,000.00
EasyGo-Gas Golf Cart	\$1,500.00
EasyGo-Electric Golf Cart	\$1,000.00
EasyGo-Electric Stretch Golf Cart	\$5,000.00
16' Landscape Trailer	\$1,200.00

Blue Jeep  
White Jeep

Mr. Richard Knowland, Senior Planner, Planning Division  
City Hall - Portland, Maine

12 May 2008

Dear Mr. Knowland,

I am a resident of Diamond Cove living at building 16 on the parade ground and very much opposed to the construction of an Inn or Hotel to replace the double barracks. It would be more sensible and acceptable to reconstruct the double barracks as it was originally planned.

The planned Inn would change the character of this unique island from a friendly family way of life to just another commercial overnight gathering place that certainly is not needed twenty-five water minutes from Portland. The pleasant summer months often now over crowded with restaurant goers and down bay visitors would certainly be in complete chaos in the cove area and destroy the safe peacefulness that the current residence have brought into the unique place.

It seems that the vote for an Inn to be considered was not done in a forthright manner and if it were to be taken again I'm sure would fail especially if the twenty-two votes given to Portland were eliminated. Most of the families that spend a significant portion of their summer here and the year round people of Diamond Cove are very much opposed to the Inn as planned. There also is much discord among many residents with the fact that so many rules and regulations of the original covenant are being disregarded and or in the process of change.

The residence of the south end of Great Diamond Island also have much concern and most are against the over use of the Island and the additions of more and more traffic to the state pier. The volunteer fire fighters and EMTs are made up of islanders from both sides of the island, which also has become a real issue, as a transient population would increase the risk of not being able to handle emergencies.

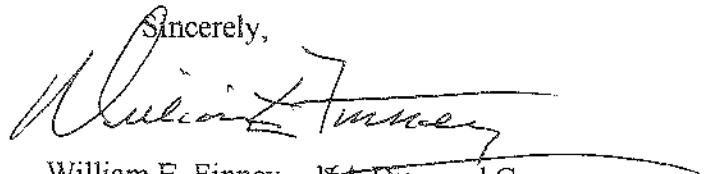
Since there are a number of issues that seem not to be in compliance with the covenant, and there are so many, "we haven't worked out that end of things yet" that the project should be thrown out or at least set into a final form and the homeowners of Diamond Cove Association be given the opportunity for a new vote.

Please be aware of some of the problems that could arise should the Inn construction go forward: Portland parking - wastewater treatment at Diamond Cove - open space that should not be taken - numbers of units left to be build which seems to be near maximum so the hospital building (in much better condition) could not be saved - commercial properties are already at limit and can only be at the cove (quartermaster section) - fire and EMT now at a low volunteer staffing with several working off island -

Please enter this letter into your records; I am not able to attend this meeting, as I will be on duty as a ward clerk for voting on the island on The 13<sup>th</sup> of May 2008.

Thank you for your attention to my thoughts and concerns about this very special island.

Sincerely,



William E. Finney - 16A Diamond Cove  
Great Diamond Island - Maine

Lisa K. Moore and Timothy A. Burris  
13H Diamond Cove  
Great Diamond Island, Maine  
04109

Planning & Development Department  
389 Congress Street  
Room 308  
Portland, Maine  
04101

20 May 2008

Dear Planning Board,

Although we will be unable to attend the meeting of the Planning Board on 27 May 2008, we wanted to go on record as having serious concerns about the proposed development at Diamond Cove, where we have been full-time residents since early June of the year 2000.

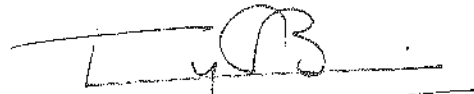
Please incorporate this letter into the minutes of the meeting.

Sincerely yours,



Lisa K. Moore

and



Timothy A. Burris



**Rick Knowland - Re: Inn at Diamond Cove**

**From:** Judy Sedgewick <wireworks100@hotmail.com>  
**To:** Rick Knowland <rwk@portlandmaine.gov>  
**Date:** 4/21/2008 5:51 PM  
**Subject:** Re: Inn at Diamond Cove  
**CC:** "nmgleason@aol.com" <nmgleason@aol.com>

Dear Rick,

I apologize that I am unable to attend the Planning Meeting concerning the Inn at Diamond Cove. I have reviewed the documents from Ron Ward and your summary prepared for the Planning Board on April 18. As President of the Diamond Island Association, I would ask you to forward this email to the Planning Board as it restates the position of the Diamond Island Association regarding this issue.

When the Inn at Diamond Cove was first proposed, the DIA decided not to adopt a position on this new development. However, it has always been our stated expectation that the original conditions of development be honored. Of specific concern is the impact of increased traffic that further development will bring. [This is defined in condition #9 of the Amendment to Portland City Code Section 14-49 Re: Conditional Rezoning of Ft. McKinley.]

The "Conditions of Development" for Fort McKinley were intended specifically to mitigate the impact of Cove development on the southern side of the island. At a recent meeting of our Directors, we again raised concerns that this development will in fact increase, not decrease, the traffic burden on the southern side of the island.

We ask that the development and operations of the Inn adhere to the "Conditions for Development" and make plans for a self-contained, self-operating facility on the DCHA property. All construction materials, laborers, Inn staff, supplies, and guests should arrive and depart within the DCHA property. There should be no vehicular impact to the southern side of the island due to the development and future operation of The Inn at Diamond Cove.

Sincerely,  
Judy Sedgewick  
DIA President

Pack up or back up—use SkyDrive to transfer files or keep extra copies. [Learn how.](#)

**Rick Knowland - Diamond Cove**

**From:** "Ann Ryan Small" <ARyanSmall@ferriterscobbo.com>  
**To:** <rwk@portlandmaine.gov>  
**Date:** 5/27/2008 3:33 PM  
**Subject:** Diamond Cove

Dear Mr. Knowland:

I am writing to you as the owner of a residence in Diamond Cove to inform you of my opposition to the proposed development plans relating to the abandoned building located at Diamond Cove.

I fully realize that agreeing to the development benefits the city in that it relieves the city of the problem of dealing with the building, which is in a state of very bad repair. However, the short-term financial benefit should not be allowed to outweigh the long-term detriment to the city of allowing commercial development in the midst of a private residential neighborhood. Citizens of the city make home-buying decisions on the basis of existing zoning and permitted uses, and it benefits all when changes to the existing restrictions are made only with the most careful consideration of what will benefit the greater good. It is difficult to believe that it will benefit the greater good if Portland's citizens cannot trust that the city will work to protect its residential areas from large commercial projects such as that proposed for Diamond Cove.

I urge you and the members of the Planning Board to give most careful consideration to the detriment to the term "planning" that will accompany a decision to allow the hotel and restaurant development to proceed on Diamond Cove. It is a special community of historic significance which should be one that the city can point to with pride, unsullied by commercial development undertaken by the city only because such development is financially beneficial to the city. Please consider alternatives that would not destroy what makes Diamond Cove and Portland special.

Thank you for your consideration.

Ann Ryan-Small  
25A Diamond Cove  
Great Diamond Island  
Portland, ME

This e-mail message and any attached files are confidential and are intended solely for the use of the addressee (s) named above. This communication may contain material protected by attorney-client, work product, or other privileges. If you are not the intended recipient or person responsible for delivering this confidential communication to the intended recipient, you have received this communication in error, and any review, use, dissemination, forwarding, printing, copying, or other distribution of this e-mail message and any attached files is strictly prohibited. If you have received this confidential communication in error, please notify the sender immediately by reply e-mail message and permanently delete the original message. Thank you.

**From:** Chris Small <small@sinauer.com>  
**To:** <rwk@portlandmaine.gov>  
**Date:** Tue, May 27, 2008 2:56 PM  
**Subject:** Inn at Diamond Cove

Dear Mr. Knowland,

I am unable to attend the planning board meeting tonight but did want to register my opposition to the proposed inn at Diamond Cove.

Of particular concern is the Diamond Cove septic system which cannot adequately serve the planned inn, in addition to the present residences at Diamond Cove. Increasing the size of it is not an option, as it is, presently, at maximum size for the site.

One other note. You should know that, regardless of the spin that was put on the "yes" vote at Diamond Cove, this project is opposed by many of the people living there and would have been defeated had the City of Portland not been able to cast 22 votes in favor of it.

I hope you will give a great deal of consideration to the concerns that are expressed by the residents of Diamond Cove at the planning board meeting tonight.

Thank you for your time.

Best regards,

Christopher Small  
25A Diamond Cove

Tom Lucke  
150 McKinley Court  
Great Diamond Island, Maine 04109

May 27, 2008

Mr. Rick Knowland  
Senior Planner  
Planning and Urban Development Department  
City of Portland  
389 Congress Street  
Portland, ME 04101

Dear Rick,

I'm writing to you with regard to the matter of the planned development of the Double Barracks at Diamond Cove, which is currently before the Planning Board.

Based on the analysis the applicant has presented to the Board, I have grave concerns about the current development plan. *In particular, it is clear that the current plan fails to adequately address the wastewater disposal needs of the project.*<sup>1</sup>

While the applicant has presented an assessment by an engineering firm (DeLuca Hoffman Associates, in a letter dated April 29, 2008), the analysis contains a number of serious errors of fact, arithmetic and interpretation. Correcting these errors leads to the conclusion that the total estimated sanitary flow after the development of the Double Barracks would be on the order of 40,500 gpd. *This corrected design flow cannot be accommodated within either the design capacity of the current system (34,500 gpd), or within the limits of our current Overboard Discharge Permit* (as an aside, it is important to note that this is before taking into account any plans to reduce infiltration and inflow ("I&I") into the system – even if I&I were reduced to zero, the design flow figures indicate that the existing three beds would not provide adequate capacity).

There are three basic adjustments and corrections that need to be made to the DeLuca estimates to arrive at a true picture of the design flows:

- The DeLuca Hoffman estimate of total Phase I bedrooms low by about 40 bedrooms (267 bedrooms vs 227). The correct figure takes into account the actual current buildout as well as a modest allowance for three other structures still to be restored

---

<sup>1</sup> You may recall that I was formerly President of the Diamond Cove Homeowners Association for several years during our transition from developer control. In that capacity, I spent a great deal of time studying our wastewater infrastructure, working with our engineers, negotiating with the developer over the need for an additional wastewater bed, reviewing the specifications for the renovation of the existing beds, and working with DEP on a variety of wastewater matters, including the re-licensing of the system. Thus while I am not a wastewater engineer, I'm speaking with some depth of knowledge on these matters.

(Mine assembly building, Mine arming building, Mule Barn). *DeLuca therefore underestimates the current Phase I residential design flows by about 3,600 gpd.*

- 7) DeLuca underestimates the number of bedrooms, and hence the flow that needs to be accounted for in considering the hotel. *Correcting for this produces an additional design flow from the hotel of about 3,000 gpd.*
  - First, there is a fundamental error in arithmetic that has DeLuca counting 38 bedrooms rather than 42.
  - The more significant error is that DeLuca fails to consider the "lockout units". As shown on the plans submitted by the applicant, the "living area" of each of the lockout rooms that includes a kitchen includes either a foldout couch/bed or a Murphy bed. In other words, the "one-bedroom" units actually divide into 2 units, one of which is a studio hotel room, and the other is a "one bedroom" hotel unit. The "two bedroom" units divide into one unit with one bedroom, and another with two bedrooms, etc. So the total "bedroom" count, if you count hotel sleeping rooms, is actually 62.
- 8) Finally, DeLuca has not accounted for any flow associated with the meals to be served in the food service area of the hotel. These can be easily calculated using the flows from the Maine Subsurface Waste Disposal Standards (table 501.2) applied to a 56 seat food service area as shown on the plans. *Correcting for this yields an additional flow, not accounted for by DeLuca, of about 1,800 gpd.*

Taking these underestimates into account (as well as a couple of other minor ones) results in a system design flow of 40,495 gpd (versus DeLuca's 32,715 gpd) which is well outside the design capacity of the existing system.<sup>2</sup>

I therefore urge the Planning Board to take a closer look at the wastewater needs of the development. Clearly the current plan is inadequate, and it would not serve any of the parties for the project to go forward without a clear plan that takes into account the full impact of the hotel. The last thing any of us want is to be put in legal jeopardy of violating of our OIBD permit.

Rick, I'd be happy to talk with you about any of these matters, or about the separate "I&I" issue.

Sincerely,



Tom Lucke

---

<sup>2</sup> The details and calculations are attached as a separate document.

Wastewater Issues Associated with the Development of the  
Double Barracks at Diamond Cove  
May 27, 2008

The design flows contained in the submission to the Planning Board and DEP dated April 29, 2008 significantly under-estimate the capacity requirements of the sand-filter system at Diamond Cove. With the appropriate design flows taken in to account, the development of the Double Barracks as a hotel/condominium cannot work within either the design capacity of the current system, or within the limits of the current Overboard Discharge Permit.

DEP has also expressed concern about the current level of infiltration and inflow (I&I) into the system. Given actual sanitary flow rates over the last few years, as well as our experience with rainwater and snow melt entering the system, it is also difficult to see how DCHA (the licensee) could remain in compliance with its overboard discharge limits without significant upgrades to the system. Note that this is a separate (but also important) issue from the one above.

Details on the design flow issue follow.

- In the submission to the Planning Board, DeLuca Hoffman Associates estimates total design flow for the system, as follows:
  - Current residential design flows
    - Total of 79 units with a total of 227 bedrooms
    - Based on 90gpd per BR, design flow of 20,430 gpd
  - Current commercial and administrative design flow 9,025 gpd, as follows:
    - 200 seat restaurant, 25 employees, 6,375 gpd
    - Marina, 90 gpd
    - Two (2) administrative offices, 480 gpd
    - Tent site, 1,750 gpd
    - Gift shop, 2 employees, 30 gpd
  - The Inn design flows
    - Total of 20 units, with a total of 36 bedrooms
    - Based on 90 gpd per BR, design flow of 3,260 gpd
- Their conclusion that the Inn can fit within current design capacity of the system, however, is based on and under-estimate of both the current design flows and the appropriate design flows for the Inn.
  - DeLuca estimated the total design flow, including “The Inn”, at 32,715 gpd, which they note is within the design capacity of the system at 34,500 gpd
    - 20,430 gpd current residential



DeLUCA-HOFFMAN ASSOCIATES, INC.  
CONSULTING ENGINEERS

778 MAIN STREET  
SUITE 8  
SOUTH PORTLAND, MAINE 04106  
TEL. 207 775 1121  
FAX 207 879 0896

- SITE PLANNING AND DESIGN
- ROADWAY DESIGN
- ENVIRONMENTAL ENGINEERING
- PERMITTING
- AIRPORT ENGINEERING
- CONSTRUCTION ADMINISTRATION
- LANDSCAPE ARCHITECTURE



April 29, 2008

Ms. Richard Knowland, Senior Planner  
Department of Planning and Development  
City of Portland  
389 Congress Street  
Portland, ME 04101

**Subject: The Inn at Diamond Cove, LLC  
Conditional Zoning Amendment  
Diamond Cove, Great Diamond Island  
Wastewater Treatment and Capacity**

Dear Mr. Knowland:

On behalf of The Inn at Diamond Island LLC, our office has prepared a summary of the wastewater treatment capacity available on Great Diamond Island in support of the applicant's requested proposal for the renovation and conversion of the "Double Barracks" (Building #46) and the "Hospital" (Building #19) into residential hotel condominiums.

The current wastewater treatment system consists of a gravity sewer collection system that conveys sanitary sewer flows to three sand filter beds for treatment prior to overboard discharge to Casco Bay. The wastewater treatment system is licensed by the MeDEP (Permit #W006931-41-A-N) to accept and treat 35,000 gallons per day based upon a monthly average.

The existing uses that are currently serviced by the wastewater treatment system and their associated sewer flow rates based upon Table 501.2 of the Maine Subsurface Waste Water Disposal Rules (MSWWDR) are summarized as follows:

2 one-bedroom units @ 90 gpd per bedroom	<del>360</del> gpd 180
15 two-bedroom units @ 90 gpd per bedroom	2,700 gpd
53 three-bedroom units @ 90 gpd per bedroom	14,310 gpd
9 four-bedroom units @ 90 gpd per bedroom	3,240 gpd
200-seat restaurant with 25 employees	
@ 30 gpd per seat	6,000 gpd
@ 15 gpd per employee	375 gpd
2 administrative offices	480 gpd
Marina pump out	90 gpd
Special event tent	1,750 gpd
Gift store with 2 employees @ 15 gpd per employee	30 gpd
<b>Total flow =</b>	<del>29,335</del> gpd 29155

It should be noted that the MSWWDR design flow rates are generally conservative. For comparison, our office reviewed the flow meter records for the wastewater treatment system from the period from

## Rick Knowland - Fwd: IDC- Notes & Conditions [DWM-Client.FID359749]

---

**From:** Danielle West-Chuhta (Danielle West-Chuhta)  
**To:** Knowland, Rick  
**Date:** 3/6/2012 4:12 PM  
**Subject:** Fwd: IDC- Notes & Conditions [DWM-Client.FID359749]  
**Attachments:** Notes and Conditions.doc

---

Rick:

I did not make any changes in the attached document, but my comments are as follows:

- 1) The date of the approval(s) should be included in #1;
- 2) The recording information should be included for each document in #5;
- 3) We may want to call out more specific information/conditions in the conditional zoning agreement and reference the recording information of the prior versions (this may be too confusing, so it is just a thought;
- 4) Recording information should be included for the reference in #6; and
- 5) I am assuming that these notes and conditions will be recorded, referenced/attached to the individual deeds for the units, referenced on the plat and referenced in the Planning Board approval, correct?

Thanks,

Danielle

>>> "Ronald N. Ward" <RWard@dwmlaw.com> 3/2/2012 2:17 PM >>>

All- was interrupted and forgot the attachment. It must be Friday- Ron

**Drummond**Woodsum

**Ronald N. Ward** | Attorney

84 Marginal Way, Suite 600, Portland, Maine 04101-2480

voice (207) 772-1941 ext. 503 • fax (207) 772-3627 • (800) 727-1941

[RWard@dwmlaw.com](mailto:RWard@dwmlaw.com) | [www.dwmlaw.com](http://www.dwmlaw.com)

*The information transmitted herein is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Unintended transmission shall not constitute waiver of any privilege, including, without limitation, the attorney-client privilege if applicable. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the e-mail and any attachments from any computer.*

*For purposes of compliance with Internal Revenue Service requirements, we inform you that any Federal tax advice contained in this communication (including any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (including any attachment).*



One Portland Square  
Portland, ME 04101

T 207.874.6000  
F 207.871.7010

[www.boulos.com](http://www.boulos.com)


January 20, 2012

To Whom it May Concern,

This letter is to confirm that we currently lease parking spaces in our Portland Square parking lots to the Portland Harbor Hotel. Should the need arise in the future we would accommodate the Portland Harbor Hotel by leasing them additional parking spaces to address their needs.

Please do not hesitate to contact me with any questions.

Sincerely,



Michael J. McDonald  
Senior Real Estate Manager

**MONTHLY PARKING CONTRACT**

Landlord hereby agrees that tenant may utilize 17 (Seventeen) space to park automobiles ( "Parking Spaces ) in the lot adjacent to the building, subject to the following terms and conditions:

- A) Tenant's right to use the Parking spaces shall commence on 3/1/12 and terminate on the earlier to occur, discontinued employment at One and Two Portland Square, or with the termination of the Lease. Either party may terminate these parking rights upon notice to the other party given at least thirty (30) days prior to the termination date.
- B) Tenant shall pay Landlord the sum of \$110.00 per month for each parking space, payable on the first day of each calendar month. Landlord reserves the right to determine from time to time new rental rates for parking spaces. New rates shall become effective on the date specified in a notice to tenant, which notice shall be delivered not less than forty-five (45) days prior to the effective date.
- C) Tenant shall use the parking spaces subject to the following rules and regulations and such other rules and regulations as Landlord or the owner or operator of the parking lot/garage may impose on it's use:

Persons using the lot/garage do so at their own risk. Landlord specifically disclaims all liability except when caused solely by its negligence or willful conduct, for personal injury incurred by users of the lot/garage their agents, employees, invitees, family, friends or guests or as a result of damage to theft or destruction of any vehicle or any contents thereof as a result of the operation or parking of any automobiles in the lot/garage.

To ensure safe traffic flow within the lot/garage, all traffic signs and signals must be obeyed. At no time tenant or its designated users alter or damage any traffic signs, entry gates or other property.

All Automobiles must be parked solely within the striped stalls. Landlord shall have the right to enter upon the parking spaces to inspect same, to perform maintenance services and to make repairs as Landlord deems necessary or desirable, without such entry constituting an eviction of tenant in whole or in part, and the charges specified herein shall in no wise abate while said maintenance and/or repairs are being affected.

**PLEASE NOTE: OVERNIGHT PARKING BY PERMIT ONLY**

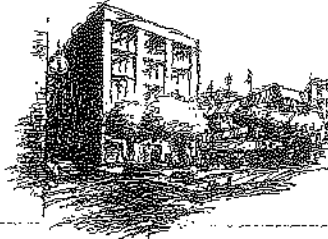
TENANT: PORTLAND HARBOR HOTEL

DATE: 3/1/12

ADDRESS: 468 FORE STREET

TELEPHONE# (207) 523 2020

SIGNATURE: 



## HARBOR PLAZA

1/19/10

The Inn at Great Diamond Island, LLC  
 PO Box 3572  
 Portland, ME 04104

Re: Double Barracks (Bldg. 46) Mainland Parking Analysis  
 For the Proposed Condominium Hotel Guests

Gentlemen,

As per your request the following analysis is based on the current required parking spaces located at the Harbor Plaza parking garage, and the additional spaces required by this proposed project.

### Existing On-Site Parking Spaces (@ The Harbor Plaza Garage)

- Parking Garage	198
- Surface Lot	20
<b>Total Spaces</b>	<b>218</b>

### Current Parking Requirements

- MEMIC Building / 47,700 sq. ft / 400 sq ft. per Space	120
- Portland Harbor Hotel / 4 Rms. / Space @ 100 Rms.	25
- 470 Fore St. / 1 Space per 200 sq. ft. Over 2000 sq. ft.	1
2 <sup>nd</sup> & 3 <sup>rd</sup> Fl. Hotel 1 Space/ 4 Rms.	1
- 468 Fore St. (Annex) /	
Basement for Hotel Use	0
- 1 <sup>st</sup> Fl. Retail 1780 sq. ft. – None Required	0
- 2 <sup>nd</sup> Fl. Hotel Meeting Rm. – None Required	0
- 3 <sup>rd</sup> Fl. 2 – Hotel Rms. – None Required	0
(See 470 Fore St. Rm. Count)	
- 4 <sup>th</sup> Fl. Offices 1780 sq. ft. / 350 sq. ft. / per Space	5
<b>Total Spaces Required</b>	<b>152</b>

Summary of Existing Uses:

Total Spaces =	218
Total Spaces Required = (By current uses)	152
<hr/>	
Balance of Spaces Available	66

Utilizing the most restrictive use application (Residential Structures) a total of 44 spaces would be required for the Condominium Hotel use / 2 spaces for every unit plus 1 additional space for every 6 units. Therefore a surplus of 22 spaces will remain after the additional use is factored.

In Summary Harbor Plaza can accommodate the additional Condominium Hotel units and is pleased to do so at our current rate structure.

Should you require additional information do not hesitate to call.

Sincerely,

  
David Bateman

**Rick Knowland - RE: Diamond Cove**

---

**From:** Kevin Gough <gough@archetypepa.com>  
**To:** RWK@portlandmaine.gov  
**Date:** 1/18/2012 3:17 PM  
**Subject:** RE: Diamond Cove  
**CC:** BAB@portlandmaine.gov; AQJ@portlandmaine.gov

---

Rick,

Please see the email I just sent to you regarding item 1 below. I have sent along revised letters which address parking/transportation, as well as a map showing the parking that will be used.

In response to Item 2 below, there will be no garbage disposals in the units.

**Kevin Gough, Architect**

Archetype, P.A.  
48 Union Wharf  
Portland, ME 04101  
Phone: (207) 772-6022  
[gough@archetypepa.com](mailto:gough@archetypepa.com)  
<http://www.archetype-architects.com>

---

**From:** Rick Knowland [mailto:[RWK@portlandmaine.gov](mailto:RWK@portlandmaine.gov)]  
**Sent:** Wednesday, January 18, 2012 11:08 AM  
**To:** [gough@archetypepa.com](mailto:gough@archetypepa.com)  
**Cc:** Alex Jaegerman; Barbara Barhydt  
**Subject:** Re: Diamond Cove

Kevin, As a follow-up to my Jan 12, 2012 review comment email.

1. The Parking information previously submitted was helpful but the real question is parking garage utilization. Does the parking garage have sufficient capacity to accommodate the hotelminium project? Zoning is one thing actual capacity is another. So what is the actual surplus of parking at the parking garage that could accommodate the hotelminium? In the event there is not enough room in the parking garage for hoteminimum guests what specific parking facilities would be used?

Also there has been discussion about prohibiting hotelminium vehicles to have residential parking stickers.

2. Will garbage disposals be installed in the units?

>>> Rick Knowland Thursday, January 12, 2012 >>>

Kevin, Below are comments generated to date on the Diamond Cove project. Some of these are new comments based on the recent submission others are from my 1-26-2010 memo.

1. Parking. The submitted parking analysis for the Harbor Plaza Garage and current parking requirements/commitments for the office building, hotel and retail was helpful. Just to clarify, please confirm whether there are any other entities (such as off-site uses) that have a lease agreement to use the parking garage.

2. Transportation response (a). Transportation has been a long contentious issue on GDI. The letter (appendix 11) is helpful in explaining the hotel guest transportation process. Does this process apply to an "owner" of a hotelminium? Also I would review the transportation services conditional zoning condition standard (5) and include that language in appendix 11 or a separate document describing in additional detail how the transportation condition will be implemented.

In the submission response to the transportation development standard (a) should provide a definitive statement that inn occupants will be arriving and leaving via the diamond cove ferry pier. I would include or reference Appendix 11. I know how contractors equipment will come to the island but what pier will contractor employees use? Which pier will hotel employees arrive and depart from the island?

3. Final documentation of "permanent drainage and maintenance easement", "common area leased from DCHA" will need to be submitted if its hasn't already.

4. Recording plat. A final recording plat will need to be submitted.

5. Fire issues. Driveway behind the building needs to be 16 feet wide. Fire Dept. is reviewing the submission. They are obviously interested in how water flow and water pressure related issues will be addressed in providing appropriate water flow for the sprinkler system.

6. Landscaping. A specific tree/vegetation protection plan should be submitted. Existing vegetation (mature trees) are shown on the plan but the plan doesn't definitively indicate whether they will be protected.

7. Bio-retention cell. A maintenance agreement should be submitted for review and approval. Recording plat should reference the agreement.

8. Environmental impact analysis response (i). I'm not sure your response totally answered the question. You may want to beef this up by indicating limited amount of site disturbance, re-using an existing building, etc.

9. Emergency services response (k). Not sure this answers the question. You may want to mention the sprinkler system as a way to mitigate fire protection services, the site is near diamond cove fire station, etc.

10. Exterior light details and specs?

11. Financial capacity. We've previously communicated comments to Ron Ward on this issue.

I am expecting further comments from staff review members next week. As they become available I will forward them to you accordingly.



DeLUCA-HOFFMAN ASSOCIATES, INC.  
CONSULTING ENGINEERS

778 MAIN STREET  
SUITE 8  
SOUTH PORTLAND, MAINE 04106  
TEL. 207.775.1121  
FAX 207.879.0896

- SITE PLANNING AND DESIGN
- ROADWAY DESIGN
- ENVIRONMENTAL ENGINEERING
- PERMITTING
- AIRPORT ENGINEERING
- CONSTRUCTION ADMINISTRATION

March 6, 2012

Ms. Richard Knowland, Senior Planner  
Department of Planning and Development  
City of Portland  
389 Congress Street  
Portland, ME 04101

**Subject:       The Inn at Diamond Cove, LLC  
                  Diamond Cove, Great Diamond Island  
                  Response to Portland Fire Department Comments**

Dear Mr. Knowland:

We have received and reviewed the Portland Fire Department's comments for the above referenced project. For ease of reference, we have repeated each comment here, followed by our response.

**Comment 1**

**The testing and maintenance of the private fire hydrants system meeting NFPA 25 standards.**

Response:

The applicant for the Inn at Diamond Cove is not aware of the private hydrant testing and maintenance program that is performed by the Diamond Cove Homeowners Association. Records of the previous hydrant testing and maintenance have been requested and will be provided to the City.

**Comment 2**

**Water main size**

Response:

Copies of the Diamond Cove Subdivision and Utility Plans (Sheets 1 through 4) prepared by Land Use Consultants, dated October 1985, provide the location and size of the water mains throughout the development. An 8-inch diameter water line is the primary feed into the Diamond Cove development from the Portland Water District distribution system. The remaining distribution system throughout Diamond Cove varies from 6" to 4" water mains as shown on the Land Use Consultants plans.



Mr. Richard Knowland  
March 6, 2012  
Page 2

**Comment 3**

**Meeting of required flows for sprinkler system and firefighting operations.**

Response:

The fire protection sprinkler system designer has provided the following sprinkler system design flow requirements:

- 210 gallons per minute for the sprinkler system
- Additional 100 gallons per minute (hose demand)

The Inn at Diamond Cove LLC has retained DeLuca-Hoffman Associates, Inc. to perform a hydraulic analysis of the private onsite water supply system servicing the portion of the Diamond Cove water system that services the Inn at Diamond Cove. This effort includes performing fire hydrant flow and pressure measurements that were performed on February 15<sup>th</sup> and observed by Lt. Wallace of the Portland Fire Department. These hydrant fire flow tests were performed by personnel from the Portland Water District and E. J. Prescott.

A summary of the hydrant flow test is provided in the following table:

Flow Hydrant I.D.	Flow Rate (gpm)	Static Pressure (psi)	Residual Pressure (psi)	Projected Flow (gpm) at 20 psi Residual Pressure
H12	375	82	30	410
H14	375	80	40	470
H16	460	82	30	500
H17	460	82	30	500
PWD	1,300	105	60	1,830

A meeting was held with representatives from the Portland Fire Department and the Portland Planning Department on February 29<sup>th</sup> to discuss the existing hydrant flow tests, sprinkler design and measures to improve the fire flow capacity of the water supply system. Additional hydrant flow tests are scheduled for March 8<sup>th</sup>, which should enable the hydraulic analysis of the system to be completed. Upon completion of the analysis, the applicant will once again meet with the Portland Fire Department to review the results to ensure compliance with the building's sprinkler system design and manual fire fighting flow requirements for the Fire Department.

**Comment 4:**

**Location and number of hydrants**

Response:

The locations of the original fire hydrants are shown on the Land Use Consultants Subdivision and Utility Plans. As shown on these plans, the original subdivision development contained twenty-seven hydrants throughout the Diamond Cove development.

Recently, representatives from DeLuca-Hoffman Associates, Inc. located each of the active fire hydrants using GPS survey equipment. The locations of the fire hydrants will be included as part

Mr. Richard Knowland  
March 6, 2012  
Page 3

of the water system hydraulic flow analysis work and submitted separately for review with the Portland Fire Department.

**Comment 5:**

**Fire Department Access according to NFPA and Chapter 10.**

**Response:**

McKinley Court, which is the primary access road around the perimeter of the parade ground, is approximately 18' in width that runs along the westerly side of the Inn. The access lane that runs along the south and east sides of the Inn is currently 11.5' to 13' in width. As discussed with Captain Pirone on February 3<sup>rd</sup>, the access lane will be widened to provide a total fire lane width of 16'. The widened surface will consist of two foot thick gravel section suitable for supporting the emergency vehicles. The extent of widened fire lane along the south and east sides of the building has been shown on the revised Site Layout and Utility Plan (Sheet C-4). A detail for the widening of the emergency access lane has been added to Sheet C-9 of the plan set.

In addition, the location of the building's external sprinkler riser connection has been added to Sheet C-4 of the plan set.

Please contact our office with any questions you may have concerning this letter.

Sincerely,

DeLUCA-HOFFMAN ASSOCIATES, INC.



Joseph A. Laverriere, P.E.  
Senior Engineer

C: David Bateman – The Inn at Diamond Cove, LLC

## MEMORANDUM



**TO:** Rick Knowland, Planner  
**FROM:** Ashley Auger, E.I.T. & David Senus, P.E.  
**DATE:** January 17, 2012  
**RE:** The Inn at Diamond Cove

---

Woodard & Curran has reviewed the Site Plan submittal for the Double Barracks renovation at Diamond Cove. The project involves twenty condominium/hotel units together with some common amenities consistent with the operation of a hotel. These amenities include a pool and restaurant. The project has provided previous Site Plan Application submittals, and has received review comments from the City of Portland Planning Office; including review comments prepared by Woodard & Curran. The project has applied for and received a Site Location of Development Act approval through the MaineDEP, which includes review of stormwater management systems for conformance with MaineDEP Chapter 500 standards.

### Documents Reviewed

- Section 12, Stormwater Management Report, prepared by Deluca-Hoffman Associates, dated March 2009
- Section 14, Erosion and Sedimentation Control Report, prepared by Deluca-Hoffman Associates, dated March 2009
- Engineering Plan Sheets C1-C10, prepared by Deluca-Hoffman Associates, dated January 2, 2012
- MaineDEP Site Law Approval, # L-13160-L3-AB-B, dated September 2009

### Comments

- As a condition of approval for the Site Law Permit, the applicant must obtain executed ground lease and drainage easements from the Diamond Cove Homeowners Association (DCHA) prior to the start of construction. As such, copies of executed ground lease and drainage easements must be submitted to the MaineDEP Bureau of Land and Water Quality and the City of Portland Planning Office in advance of the work.
- The *Inspection and Maintenance Manual for Stormwater Management and Related Stormwater Facilities* should be updated to reflect the requirements of Chapter 32, Article III. Post Construction Stormwater Management of the City of Portland Code of Ordinances.

Diamond Cove supplies have used the southerly pier for other than emergency access. Since the mid-1980s, the relationship between DIA members and Diamond Cove owners and residents has been acrimonious at times, and DIA members have experienced great difficulty in persuading City and State officials to enforce those permits, conditions and agreements, with ambiguities and differences in responsibilities having been cited as reasons not to do so.

Therefore, DIA asks the Planning Board to help ensure that the permits it issues and the conditions it attaches to this new development are clear, unambiguous and consistent with other permits and approvals for this development – so that the planning approvals for The Inn at Diamond Cove will not also become a source of controversy in the future. The Planning Board can do so by taking these two actions:

1. **Adopting a definition of the term “Diamond Cove Pier” in the findings of fact that the Planning Board will issue as part of its written decision, and by stating that references in the application materials to “the Diamond Cove landing of the Casco Bay Lines” or to “the Diamond Cove ferry landing” or to “the pier in Diamond Cove” (all terms used at various times by the applicant in its application) or similar terms mean the “Diamond Cove Pier.”** The City Council used the term “Diamond Cove Pier” in the IR-3 Conditional Zoning Amendment it adopted on September 3, 2008, and so it makes sense to use this term consistently in referring to the pier. Because this application is for an amendment to an approved subdivision plan, the Planning Board’s definition could tie the term “Diamond Cove Pier” to its depiction on a subdivision plan that is recorded or is to be recorded. For example, the Planning Board’s definition might be “the pier depicted to the right of the legend ‘Diamond Cove’ on a map entitled ‘Plan of Diamond Cove Phase I – Third Amended Sheet 3’ dated February 5, 2001 and recorded in the Cumberland County Registry of Deeds in Plan Book 202, Page 527” (an example of a recorded plan showing the Diamond Island Pier).

2. **Attaching a condition of approval that the applicant will store, dispose of and handle solid waste in accordance with the Maine Department of Environmental Protection’s September 2009 Site Location of Development Act Minor Amendment Order (the “DEP Order”) for the Inn at Diamond Cove.**

The need for this is shown by what happened at the Workshop.

The IR-3 Conditional Zoning Amendment states in Section 3 (“Disposal of Solid Waste”):

All solid waste generated on the Premises shall be collected and disposed of privately, on the mainland, with temporary storage of such waste being handled within the building and disposed of in accordance with all applicable regulations, codes and laws; or if, in the City’s opinion, it would not create an unreasonable burden thereon, at a municipally-operated island solid waste disposal facility.

The DEP Order in Section 10 states:

All general solid wastes from the proposed project will be collected and stored within the hotel/condominium facility before being transported by barge or otherwise from Diamond Cove property to the mainland for disposal at Ecomaine,

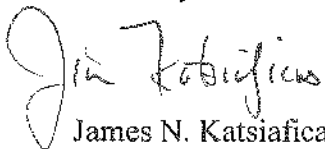
In other words, both the City IR-3 Conditional Zoning Amendment and the DEP Order require solid waste generated by The Inn at Diamond Cove to be collected and stored within the Inn, and the DEP Order requires the solid waste to be "transported by barge or otherwise **from Diamond Cove property to the mainland** for disposal at Ecomaine." The DEP Order does not allow temporary storage or transportation of solid waste on the southern part of the Island.

Archetype's January 3, 2012 Site Plan Application letter with regard to solid waste recited only the first half of the above: "All solid waste will be held within the building in a trash room and will be picked up and removed in accordance with the Diamond Cove Homeowner's Association, of which this project will be a member." It is unknown whether solid waste removal in accordance with DCHA complies with the DEP Order's requirement that solid waste be "transported by barge or otherwise from Diamond Cove property to the mainland for disposal at Ecomaine." Because Archetype's letter could be read to contemplate using solid waste temporary storage and transportation over the southern part of the Island, DIA asked for a special condition of approval imposing the DEP Order's solid waste provisions. Attorney Ward responded that it was unnecessary because the applicant had to comply with the DEP order.

However, in summarizing the dispute between DIA and the applicant on solid waste generated by the development, the January 24, 2012 Planning Department Memorandum to the Planning Board reads, "The Diamond Island Association indicates waste associated with the hotelminium project should be transported off the island from the Diamond Cove side of the island and not cross the southerly end of the island." While DIA did make the statement, DIA did not invent the requirement that solid waste be transported from Diamond Cove property – **it is clearly stated in the DEP Order and is omitted from Archetype's description of the development's solid waste plan.** This is a perfect example of how for the past 25 years clear permit requirements have become "ambiguities" that have led to conflict among these parties and have caused a lack of enforcement. The Planning Board can help prevent this from happening with regard to this new development by attaching the condition of approval requested by DIA.

Thank you for your consideration.

Sincerely,



James N. Katsiaficas

JNK:pal

cc: Richard Knowland, Senior Planner, City of Portland  
Diamond Island Association

## James N. Katsiaficas

---

**From:** James N. Katsiaficas  
**Sent:** Monday, January 30, 2012 5:25 PM  
**To:** rward@dwmlaw.com  
**Cc:** RWK@portlandmaine.gov; Nmgleason@aol.com; jmsgdi@myfairpoint.net  
**Subject:** Inn at Diamond Cove Application

Hi Ron:

I'm following up on our brief conversation at the end of last week's Planning Board workshop on the Inn at Diamond Cove application.

As I noted at that time, my client, the Diamond Island Association, has authorized me to work with you to "fine tune" the application materials language to help insure that the terminology and provisions for transportation and solid waste are consistent internally and consistent with other approvals so as to avoid any potential future issues and misunderstandings. Please let me know if that is acceptable to your client.

For example, with regard to transportation, we could agree on a definition of "Diamond Cove Pier" that refers to a recorded subdivision plan and then the Applicant and the Board could use that term consistently.

With regard to solid waste, we could agree to a Planning Board condition of approval, or a statement in your application to the Planning Board which would be restated in the Board's findings, that the applicant will store, dispose of and handle solid waste in accordance with the September 2009 Site Location of Development Act Minor Amendment for the Inn at Diamond Cove.

Reaching agreement on these two matters now would allow the Applicant to make the appropriate submittals in advance of the Feb. 14 2012 Planning Board hearing that would avoid our having to again bring these matters to the Board.

Thank you.

Jim

---

JAMES N. KATSIAFICAS  
ATTORNEY

**PERKINS|THOMPSON**

ONE CANAL PLAZA, PO Box 426  
PORTLAND, ME 04112-0426  
207.774.2635 x8108 MAIN  
207.400.8108 DIRECT  
207.871.8026 FAX

[www.perkinsthompson.com](http://www.perkinsthompson.com)

[jkatsiaficas@perkinsthompson.com](mailto:jkatsiaficas@perkinsthompson.com)

**CONFIDENTIALITY AND TAX ADVICE NOTICE:** The information contained in this communication may be confidential or privileged. If you are not the intended recipient of this communication, any disclosure, copying, distribution or use of this communication is prohibited. If you have received this communication in error, please notify the sender and immediately destroy this communication. Any tax advice contained in this communication cannot be used to avoid tax penalties.

February 7, 2012

Portland Planning Board  
City of Portland  
389 Congress Street  
Portland, ME 04101

Re: The Inn at Diamond Cove

Dear Board Members:

This Firm represents Diamond Island Association ("DIA") with regard to the proposed "The Inn at Diamond Cove" development. As we have stated previously, DIA has not voted to oppose the Inn at Diamond Cove's application. However, it seeks to ensure that whatever is approved, constructed and operated is consistent with City and State approvals and with City of Portland zoning. In this regard, the application's statements regarding transportation and solid waste continue to concern DIA and its members.

At the January 24, 2012 Workshop on this application, DIA raised these concerns to the Planning Board. After the conclusion of that Workshop, I spoke with applicant's counsel, Ronald Ward, Esq., and told him at that time that my client, DIA, had authorized me to work with him to "fine tune" the application materials language to resolve DIA's transportation and solid waste concerns. He said that he would have to check with his client. On Monday, January 26, 2012, I sent him an email reiterating that offer (copy enclosed). To date, I have received no response from Attorney Ward.

Therefore, I am sending this letter on behalf of DIA in advance of the February 14, 2012 public hearing on this application to request that the Planning Board take two actions with regard to this application.

By now, the Planning Board is well acquainted with the history of the cottage community on the southern part of Great Diamond Island that has existed and been represented by DIA since the 1880s. The Board also is well acquainted with the Diamond Cove development on the northern part of Great Diamond Island that began in the 1980s. The Board has seen that in the zoning, planning and land use approvals for the Diamond Cove development, the Portland City Council, the Portland Planning Board and the Maine Department of Environmental Protection attempted to keep these developments separate, with the southern part of Great Diamond Island using the southerly pier for access and the Diamond Cove development using the Diamond Cove Pier for access. However, despite what we believe were clear permits, conditions and agreements, Diamond Cove owners, occupants, guests, contractors and employees and

PHILIP C. HUNT  
JOHN S. UPTON  
PEGGY L. McGEHEE  
MELISSA HANLEY MURPHY  
JOHN A. HOBSON  
JAMES N. KATSIARICAS  
TIMOTHY P. BENOIT  
J. GORDON SCANNELL, JR.  
FRED W. BOFF III  
MARK P. SNOW  
WILLIAM J. SHELS  
DAVID B. McCONNELL  
PAUL D. PETROPAOLI  
HOPE CREAL JACOBSEN  
RANDY J. CRESWELL  
JULIANNE C. RAY  
DAWN M. HARMON  
CHRISTOPHER M. DARGIE  
ANTHONY J. MANHART  
STEPHANIE A. WILLIAMS  
PETER J. McDONELL  
KEITH J. DUNLAP  
SARA N. MORRIN  
JEFFREY A. COHEN  
SHAWN K. LEYDEN  
JOSEPH G. TALBOT  
LAUREN B. WELIVER

**OF COUNSEL**

DOUGLAS S. CARR

JOHN A. CIRALDO  
1956 - 2010