

83E-E-46

2008-0177

18 McKinley Ct. - GDI

Inn at Diamond Cove

Inn at Diamond Cove, LLC.

on Spreadsheet

ATTAR ENGINEERING, INC.

CIVIL * STRUCTURAL * MARINE

3 BRANNEN LANE
ELIOT, MAINE 03903
(207) 439-6023
FAX 439-2128

Planning Board
City of Portland
389 Congress Street
Portland, Maine 04101

March 24, 1998
Project No.: C030-98

**Re: Harbor Plaza Hotel & Apartments
Fore Street & Union Street**

Dear Board Members;

Fore Street LLC is proposing to construct a luxury hotel and apartment facility at Fore Street and Union Street in the Old Port section of Portland, Maine. The project site is located within the "B-3" Zone (Downtown Business District). The dimensional requirements for this zone are as follows:

| | |
|--------------------------|------|
| Lot Size: | None |
| Minimum Frontage: | 15' |
| Minimum Yard: | None |
| Minimum Width: | None |
| Maximum Lot Coverage: | 100% |
| Minimum Building Height: | 35' |
| Maximum Building Height: | 65' |

Development Description

The existing Harbor Plaza complex, located between Commercial, Union, Fore and Cross streets, consists of a six story office tower, a twenty space parking lot, a three story commercial building, and a 198 space three level parking garage. Major construction and renovation of these buildings and facilities, the first of two phases, was completed in 1984. The proposed project, Phase II of the Harbor Plaza master plan, involves the construction of a four level "L" shaped building above a portion of the parking garage. A Cabaret style restaurant and lounge and an external, landscaped courtyard will also be constructed above the "footprint" of the garage. The parking garage was designed and constructed with additional structural support capability to accommodate the proposed expansion.

The proposed structure will contain approximately fifty luxury hotel rooms, a lobby, and conference areas on the first and second level and seventeen, two-story, luxury apartments on the third and fourth level. The building fronts on both Fore Street and Union Street, with the main entrance located at the intersection of these streets. The Cabaret will be constructed adjacent to the hotel on the main (first) level. The external courtyard will also be constructed on this level.

development has 198 spaces in
garage plus 20 surface
parking spaces

1998 Harbor Plaza

June 23, 1998 report

198 spaces in garage; 50 required for ^{the} development
existing use: parking garage
proposed use: garage; hotel (50 rooms); multi-family (17 apartments)

July 6, 1998 P.D. approval letter

approved on June 23, 1998

2001 two-story addition increasing rooms from 84 to 100

2007 16 additional spaces are needed Marge S.
parking study submitted 5/31/2007

Aug 21, 2007 memo from T. Correll

120 spaces for Memic

98 spaces for Hotel

207 hotel spaces (1 space per 4 rooms)

ATT 1-0

Rick Knowland - Building 46 - Great Diamond Island

From: Thomas Errico <Thomas.Errico@tylin.com>
To: Rick Knowland <RWK@portlandmaine.gov>
Date: 12/23/2009 8:33 AM
Subject: Building 46 - Great Diamond Island
CC: David Margolis-Pineo <DMP@portlandmaine.gov>, Katherine Earley <KAS@portlandmaine.gov>

Rick -- I have reviewed the November 18, 2009 submittal prepared by Archetype and offer the following comment.

- The applicant should provided detailed information on parking usage at the Portland Harbor Hotel for guests of the proposed Inn. This should include not only actual excess parking supply during the peak summer months, but also conformity with site plan parking requirements for the Portland Harbor Hotel.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, P.E.
TYLIN INTERNATIONAL

12 Northbrook Drive
Building A, Suite One
Falmouth, ME 04105

207.347.4354 (Direct)
207.781.4721 (Main)
207.781.4753 (Fax)
207.400.0719 (Mobile)



ATT 2-H-1

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 |
| Total Spaces | 218 |

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 nd & 3 rd Fl. Hotel 1 Space/ 4 Rms. | 1 |
| - 468 Fore St. (Annex) / Basement for Hotel Use | 0 |
| - 1 st Fl. Retail 1780 sq. ft. - None Required | 0 |
| - 2 nd Fl. Hotel Meeting Rm. - None Required | 0 |
| - 3 rd Fl. 2 -- Hotel Rms. - None Required | 0 |
| (See 470 Fore St. Rm. Count) | |
| - 4 th Fl. Offices 1780 sq. ft. / 350 sq. ft. / per Space | 5 |
| Total Spaces Required | 152 |

Summary of Existing Uses:

| | |
|------------------------------------|-----------|
| Total Spaces = | 218 |
| Total Spaces Required = | 152 |
| (By current uses) | |
| <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



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



PORTLAND HARBOR HOTEL

Old Port District

Inn at Diamond Cove

Guest arrival and check-in process

The guest experience at the Inn at Diamond Cove will begin with the arrival at the Portland Harbor Hotel Valet parking area. The valet will take the guest car and luggage, and send the guest off to enjoy the Old Port until their designated Ferry departure time. If the guest flies into Portland, our town car will pick up the guest at the airport, store their luggage and send them off into town.

The valet attendant will park the car at the hotel parking on premise or at the adjacent parking lot located at the corner of Cross and Fore St. where the hotel holds a lease for an unlimited number of overflow parking spaces. The guest car will be kept at the hotel until the guest needs it again.

Guest luggage will be sent to Great Diamond Island via ferry by one of our valet staff ahead of the guest arrival to the Island. The bellman from the Inn at Diamond Cove will meet the ferry, retrieve the luggage and deliver it directly to the guest room before the guest arrives.

Guests will be directed to board the ferry anytime between 4:00 p.m. & 6:00 p.m and to get off at the pier in Diamond Cove. A Bellman from the Inn at Diamond Cove will meet them with the golf cart and escort them to the Inn.

Ferry tickets for guests' transportation will be purchased in advance in bulk and provided to our guests upon arrival at the Portland Harbor Hotel. The staff will have monthly ferry passes purchased by the Inn.

The golf cart used to shuttle our guests on the island will be parked at the Inn unless we are expecting guests to arrive on the ferry, at which time, the cart will be stationed at the landing awaiting ferry arrival.

Gerard Kiladjian
General Manager



468 Fore Street, Portland, Maine 04101 • 207-775-9090

Fax: 207-775-9990 • Reservations: 888-798-9090 • www.portlandharborhotel.com



Memorandum
Department of Planning and Urban Development
Planning Division

To: Chair Hall and Members of the Portland Planning Board
From: Richard Knowland, Senior Planner
Date: January 26, 2010
Re: The Inn at Diamond Cove, Great Diamond Island

A workshop has been scheduled to consider a proposal by The Inn at Diamond Cove, LLC. for a proposed 20 unit residential hotel condominium (hotelminium) on Great Diamond Island. This proposal would renovate the existing Double Barracks building within the parade ground of the Fort McKinley complex on Great Diamond Island. The Double Barracks building is the largest brick building not renovated within the Fort McKinley complex.

The Board held an initial workshop on this proposal on January 27, 2009. Since that time the applicant has received all necessary approvals from the Maine DEP related to a waste discharge license for the existing overboard wastewater discharge and a site location permit for various site changes associated with the condominium development.

The proposal is subject to site plan and subdivision review.

A vicinity map is shown on Attachment 1-A. An outline of commonly asked questions about Diamond Cove and IR-3 zoning is shown on Attachment 1-B.

Site plans and building elevations are shown on Attachments 2-C and 2-D.

Notices were sent to all property owners on Great Diamond Island.

The applicant is represented by Archetype (architect), DeLucca-Hoffman (engineer) and Ronald Ward (attorney).

I. FINDINGS

| | |
|------------------|---|
| Zoning: | IR-3 conditional use zone |
| Use: | Residential hotel condominiums (hotelminiums) |
| Number of units: | 20 with with 16 lock-out units two 1 bedroom units; ten 2 bedroom units; eight 3 bedroom units |

A condition of the permit is that the City Council (Hotelminium) plan
 A condition of the permit is that the City Council (Hotelminium) plan
 A condition of the permit is that the City Council (Hotelminium) plan

Building footprint: existing13,629 sq. ft.
proposed.....16,510 sq. ft.
Building floor area: existing building.....51,164 sq. ft. plus addition
(2,881 sq. ft.)
cabana building.....3,100 sq. ft.
Total site disturbance: 34,848 sq. ft.

The swimming pool, cabana and surrounding open space area (approx. 15,473 sq. ft.) though owned by the Diamond Cove Homeowners Assoc. will be leased by The Inn at Diamond Cove LLC.

II. DEVELOPMENT APPROVALS RECEIVED TO DATE

City of Portland Historic Preservation Board: Approval letter dated Nov. 6, 2009 with condition. See Attachment 1-G.

Maine Department of Environmental Protection: Approval letter dated Sept. 9, 2009 (with conditions) for a Maine Pollutant Discharge Elimination System Permit and Waste Discharge License involving a transfer and renewal of the license. This approval addresses sanitary waste and overboard discharge related issues. See Attachment 2-E.

Maine Department of Environmental Protection: Approval letter dated Sept 2009 under the Site Location of Development Act involving revisions to the site plan. See Attachment 2-F.

II. CONDITIONAL ZONING AMENDMENT

After Planning Board review, the City Council on September 15, 2008 enacted an amendment to the IR-3 conditional zoning for the Diamond Cove property to allow the proposed residential hotel condominium use for the Double Barracks building and the Hospital building. The Hospital building is a future project and is not part of this application.

The complete text of the enacted amendments is shown on Attachment 1-C. The amendments established a definition for the residential hotel condominium use (hotelminiums) and allowed up to 20 condominium units with up to 16 lock-out units in the Double Barracks building. The text also referenced a swimming pool and cabana services building to the rear of the Double Barracks building as depicted on the site plan.

Other Provisions

- (3) Disposal of Solid Waste: Applicant is responsible for disposing of solid waste associated with this use privately on the mainland or if in the opinion of the city, it would not create an unreasonable burden, at a municipal island solid waste disposal facility.
- (4) Fire Protection: Buildings shall be fully sprinkled and a central fire alarm system shall be installed.
- (5) Transportation Services: Ferry service for the project is intended to be from and between the Portland Waterfront and the Diamond Cove Pier. The owner/manager shall not provide motorized ground transportation off the Ft. McKinley Project site. Guests, tenants, invitees and employees shall not operate motorized ground transportation of any kind to travel off the Ft. McKinley project site to the southerly pier except in the event of an emergency. All such transportation shall 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 owners, guests and employees will be directed to utilize Casco Bay Lines or private water shuttles arriving at the Diamond Cove landing point (at the north end of Great Diamond Island) and will be specifically advised not to utilize any off-site facilities, including the pier at the south end of the island. The owner/manager shall conspicuously post, and keep posted in each hotel minimum units at the premises, a written notice of the applicable ordinances, rules and regulations.
- (6) Sanitary Waste: No site plan or subdivision application shall be approved by the city unless and until documentation of Maine DEP approval of the sanitary waste system serving the Premises is provided.

With submission of the applicable DEP approvals this requirement has now been met.

III. PROPOSED DEVELOPMENT

The proposed development involves the renovation and conversion of the Double Barracks building into residential hotel condominiums. The applicant is not pursuing redevelopment of the hospital building at this time. Site plans and building elevations are shown on Attachments 2-C and 2-D. The specific elements of the development proposal include the following:

- Renovation and conversion of the Double Barracks building into residential hotel condominiums.

- A 2,881 sq. ft. addition is proposed to the rear of the building. It will apparently function as a dining/meeting room. An earlier plan indicated a dining room/reception area for 14 tables serving about 56 people. Other building additions include an elevator and a new porch. Patios are proposed on both sides of the addition.
- A swimming pool and a cabana building (food service, bar) are proposed to the rear of the building. A deck is shown adjacent to the pool and and cabana area.
- A series of small bioretention cells are proposed between the building addition and the swimming pool to treat stormwater. A new storm drain line is proposed that will outlet to an existing drainage swale.
- A parking space for a shuttle vehicle (6 ft. by 15 ft.) is shown along the rear driveway behind the Double Barracks building.

IV. SITE PLAN ISSUES

Wastewater Treatment and Capacity

Condition 6 of the conditional zoning states: "No site plan or subdivision application shall be approved by the City unless documentation of Maine DEP approval of the sanitary waste system serving the premises is provided."

This condition has been addressed with Maine DEP approval of a Maine Pollutant Discharge Elimination System Permit and Waste Discharge License. See Attachment 2-E.

By way of background, the original Diamond Cove wastewater treatment system approved by the DEP in 1986 was designed to accommodate 134 condominium units and 5 commercial uses. As the development was scaled back, the number of sand filter treatment fields was correspondingly reduced.

By 2000, a third sand filter was installed accommodating what was believed to be a total build-out of only 77 condominium units and providing for increased wastewater flows from the Diamond Cove restaurant. The wastewater treatment system is licensed by the DEP to accept and treat 35,000 gallons of waste per day based on a monthly average. The sand filter treatment system has an outfall pipe in Casco Bay. In September 2003, the DEP formally banned new overboard discharges. The existing sand filter treatment system may be maintained but the amount of wastewater flow into Casco Bay may not be increased above the license restrictions.

The developer submitted an application to the Maine DEP on December 31, 2008 to modify the existing wastewater discharge license to accommodate the additional wastewater flows for this project. After reviewing the application the Maine DEP has

determined the project in combination with the remaining Diamond Cove development will not exceed the license limits of 35,000 gallons per day based on a monthly-daily average. According to the DEP, existing uses contributing to the waste collection and treatment system generate approximately 28,910 gallons of waste per day. The proposed project is anticipated to discharge an additional 4,545 gallons of wastewater per day which will result in a daily flow waste under the daily average cap of 35,000 gallons.

A key factor in remaining below the license limits is controlling groundwater infiltration into the sewer pipes. Groundwater that migrates into the sewer pipes reduces the capacity of the treatment system. Infiltration has been a long standing issue at Diamond Cove and the property owner has made incremental improvements over the years in an attempt to address this problem. The DEP approval is “requiring rehabilitation of the remaining 1,340 linear feet of non-rehabilitated wastewater conduit associated with this Permit in addition to the other remedial measures proposed in the application...”

Other DEP requirements/conditions of interest include:

- Prohibiting wastewater (including inflow and/or infiltration) from the Hospital from inclusion in the wastewater influent to the existing over board discharge sand filter treatment system. Prior to habitation of the Inn the sewer connection to the Hospital must be capped.
- Prohibiting wastewater from the proposed swimming pool to the existing over board discharge sand filter system.
- Requiring updates to the Operation and Maintenance Plan to include provisions for near capacity discharges.

As part of the Site Location review, the DEP is requiring that “the kitchen and cabana of the proposed inn shall not contain any equipment that would necessitate the use of a grease trap, and shall be limited to serving only continental breakfasts and light snacks to guests of the inn.” This effectively means there will be no restaurant at the inn. This restriction is intended to address the concern that a second restaurant at Diamond Cove would increase the waste flow above the discharge license requirements.

Transportation

The revised conditional zoning provisions are very specific in prohibiting motorized ground transportation off the Fort McKinley site to the southerly pier. The intent is that owners and visitors of the units will use the Diamond Cove pier for all water transportation needs and not use the southerly pier. As the Board is aware the transportation issues on Great Diamond Island (motor vehicles, golf carts, common motor vehicles) have been complex and contentious. We have requested that the applicant submit in writing how they will be implementing the transportation condition requirements.

The plan indicates that a designated space for shuttle vehicle (6 ft by 15 ft) will located adjacent to the rear driveway.

A two bike storage rack per sec. 14-526(a)(i)(c) is shown on the plan to the rear of the Double Barracks.

Tom Errico, Traffic Engineer Consultant, has reviewed the plan and indicates “the applicant should provide detailed information on parking usage at the Portland Harbor Hotel for guests of the proposed Inn. This should include not only actual excess parking supply during the peak summer months, but also conformity with site plan requirements for the Portland Harbor Hotel.”

In response a letter has been submitted by David Bateman (dated Jan. 19, 2009) regarding mainland parking supply at the Harbor Plaza/Portland Harbor Hotel. The letter states the Harbor Plaza Garage includes 198 spaces within the parking garage and 22 surface spaces. “Current parking requirements” for existing uses on the site (MEMIC building, Portland Harbor Hotel, etc.) are calculated as 152 spaces leaving a balance of 66 spaces. Utilizing the most restrictive application (residential uses) 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. The letter concludes a surplus of 22 spaces will remain after the additional use is factored. Staff will review project files regarding parking requirements for other projects using the parking garage to confirm this apparent surplus.

Stormwater

The site plan indicates that a series of 4 small bio-retention basins are proposed adjacent to the roadway between the Double Barracks building and the swimming pool. The basins are intended to address stormwater quality issues required by the Maine DEP. This requirement is being triggered by the 7,620 sq. ft. of additional impervious surface areas associated with the building addition, walkways, pool and pool deck. A cross section of the proposed bio-retention basin is shown on Attachment 2-C-10. The bio-retention system replaces a plunge pool that would have required significant vegetation clearance shown on the original site plan.

Stormwater from the bio-retention basins flows into 6 catch basins and is then conveyed into a new stormdrain line that runs along the driveway before diverting to an existing drainage swale within designated common open space. The outlet of the stormdrain includes a riprap apron. See Attachment 2-C-8 for construction detail.

A note on the plan indicates that a portion of the storm drain line and outlet are located on a “permanent drainage and maintenance easement (approx. 3,032 s.f) between The Inn at Diamond Cove LLC and the Diamond Cove Homeowners Association”. An executed copy of this agreement should be submitted for review and approval.

Fire

The conditional zoning requires that the Double Barracks be fully sprinkled and have a central fire alarm system.

✓ We have requested further information on the size of the waterlines including the size of the waterline feeding the sprinkler system and associated water flow and water pressure data to assure that water supply will be adequate for the sprinkler system. To the best of our knowledge the Double Barracks building will be the first building at Diamond Cove to have a sprinkler system.

A letter from Archetype indicates there are two options for addressing the installation of a fully operable sprinkler system. See Attachment 2-L. The first option would be to increase the water pressure in the existing water system by closing the loop of the water lines, which currently dead-end downstream from Building 46. The letter indicates this modification “would increase the pressure adequately to supply the sprinkler system”.

The second option would be to install a sprinkler pump within the building to provide an adequate flow of water in the event the sprinklers are activated for a fire.

Capt. Keith Gautreau of the Fire Dept. has reviewed the Archetype letter and indicates a fire pump for the sprinkler system would be a good alternative solution if the water line is not extended. In the event there is not a specific resolution of this issue with supporting documentation submitted prior to the public hearing this will need to be a condition of approval.

The nearest hydrant is about 200 feet from the Double Barracks which is acceptable.

The driveway behind the Double Barracks is about 13 feet wide. Comments from Captain Gautreau indicate the driveway should be a minimum of 16 feet wide for fire access.

Building Elevations

Building elevations are shown on Attachment 2-D. Since Fort McKinley is located in a historic district, the project is subject to review by the Portland Historic Preservation Board. On September 16, 2009, the Historic Preservation Board voted to approve a Certificate of Appropriateness (with conditions) for the comprehensive rehabilitation of the exterior alterations, building addition and site changes. See Attachment 1-G. The plans have also been reviewed and approved (with conditions) by the US Dept. of the Interior National Park Service for compliance with the guidelines for rehabilitation to historic properties. See Attachment 2-G.

The Double Barracks building is the largest brick building not renovated in the Fort McKinley complex and is currently in a very deteriorated condition. The proposal preserves the character defining features of the building with very limited changes to the exterior. The proposed building addition has a brick exterior and is located on the

northerly or rear side of the building. Small dormers are proposed on the northerly side of the building. The slate roof will apparently be retained in all 4 sides of the building.

A building elevation of the cabana building has been submitted. The cabana is an octangular shaped building sheathed in wood shakes.

Landscaping

A landscaping plan has been submitted. See Attachment 2-C-7. 120 shrubs and ornamental grasses are proposed adjacent to the building addition and the swimming pool area. Groundcover material including vines and herbaceous plants. Three Autumn Brilliance Serviceberry (1 1/2-2 in. caliper), three Korean Dogwood (5 to 6 ft high) and one Saucer Magnolia (5 to 6 ft high) are proposed.

Vegetation will be disturbed for the construction of the swimming pool. A tree protection plan should be submitted.

Comments from the City Arborist will be available for the public hearing.

Financial Capacity

An updated financial capacity letter should be submitted.

IR-3 Development Standards

Applicant should provide a written response to the IR-3 development standards (sec. 14-156.16). Although there is some overlap with site plan standards this section states "no development shall occur nor shall any use be established unless the planning board finds that the final development plan is in compliance with the following [IR-3] development standards".

Subdivision Plan

A subdivision recording plat will need to be submitted meeting the requirements of the Subdivision Ordinance. A recording plat was submitted on Thursday but staff has not had the opportunity to review it. See Attachment 2-M.

Written Public

Over the past year (plus) we have received a large number of written comments on this project. Attachment C includes the most recent comments received. For the public hearing we will gather together all of the comments for the Board to review.

Attachments

- 1-A Vicinity Maps
- 1-B Commonly Asked Questions on Diamond Cove
- 1-C Revised Conditional Zoning Amendments, enacted September 15, 2009
- 1-D Comments of Tom Errico, Traffic Review Consultant (December 23, 2009)
- 1-E Comments of David Margolis-Pineo, City Engineer (December 23, 2009)
- 1-F Comments of Keith Gautreau, Fire Captain (January 21, 2010)
- 1-G Approval Letter from Historic Preservation Board (November 6, 2009)

Applicant Submission

- 2-A Introductory Cover Letter and Related Exhibits for January 27, 2009 Planning Board Workshop
 - 2-B Introductory Cover Letter for January 26, 2010 Planning Board Workshop
 - 2-C Site Plan
 - 2-D Building Elevation
 - 2-E Maine DEP Maine Pollutant Elimination System Permit and Waste Discharge License (September, 2009)
 - 2-F Maine DEP Site Location Permit (September, 2009)
 - 2-G US National Park Service Historic Preservation Certification (May 15, 2008)
 - 2-H Parking Related Information
 - 2-I Portland Water District Letter (May 6, 2008)
 - 2-J Stormwater Management Report
 - 2-K Erosion and Sedimentation Report
 - 2-L Water Capacity and Sprinkler System Info.
 - 2-M Recording Plat
 - 2-N Second Amendment to Amended and Restated General Declaration of Covenants and Restrictions (on file in Planning Office)
 - 2-O Property Deed (on file in Planning Office)
- 3 Written Public Comment

118 Sunset Ave.
Great Diamond Island
Portland, ME 04112-4804
Jan. 20, 2010

Mr. Richard Knowland, Senior Planner
Planning Division, City Hall, 4th floor
389 Congress St.
Portland, ME 04101

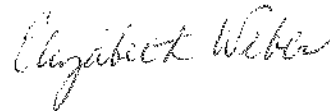
Dear Sir:

A resident / homeowner on Great Diamond Island, I'm writing to you regarding the proposal by the Inn at Diamond Cove LLC to renovate the double barracks building in Diamond Cove.

I am in favor of the proposal, primarily because this derelict structure poses a serious threat to the health and safety of islanders and visitors (especially the children). Also, I believe there will be economic benefits for the island (jobs...) and the City (taxes).

I am a member of the Diamond Island Association, but please note... *they do not speak for me.* (I am disturbed: that Board claims to represent us, but has not informed its members nor taken a poll or survey.)

Yours truly,



Elizabeth A. Weber

Rick Knowland - The Inn at Diamond Cove

From: "Kevin Gough" <gough@archetypepa.com>
To: "Rick Knowland" <RWK@portlandmaine.gov>
Date: 10/13/2009 2:12 PM
Subject: The Inn at Diamond Cove

Rick,

I want to touch base with you about re-starting the process for planning approval for the Inn on Great Diamond Island. We now have our DEP permits and sewerage issues resolved, and are preparing our next resubmission to staff for review.

My question for you is whether you could give me your best analysis of where we are currently, to make sure you and I are on the same page. As I see it, the most recent correspondence was the Dept of Planning Memorandum of January 27 in advance of the last workshop hearing. If we are to seek our next hearing, could you tell me what would be a reasonable date for our re-submittal of information to you, based upon the findings of that last meeting? Additionally, was there a letter of findings issued after that meeting? I do not have a record of that.

When you get a moment, maybe we could have a conversation about next steps.

Thank you.

Kevin Gough, Architect

Archetype, P.A.

48 Union Wharf

Portland, ME 04101

Phone: (207) 772-6022

gough@archetypepa.com

<http://www.archetype-architects.com>

Rick Knowland - RE: The Inn at Diamond Cove

From: "Kevin Gough" <gough@archetypepa.com>
To: "Rick Knowland" <RWK@portlandmaine.gov>
Date: 11/2/2009 2:35 PM
Subject: RE: The Inn at Diamond Cove

Rick,

Regarding our re-submission of the Inn at Diamond Cove:

We are planning to submit to you our revisions and amendments at the end of this week in the hopes of getting on the agenda for December. We did submit a formal application on December 5, 2008, and a revised and extended application on January 9, 2009.

At this point, we have addressed the site plan concerns that were discussed in the last workshop; we have received our DEP Permit Approval; our Portland Historic Approval, and a few more things.

My question is, what is the best method to approach this. Do I simply send any additional or revised information to add to the packet, or do I need to send everything from the beginning?

Let me know.

Kevin Gough

From: Rick Knowland [mailto:RWK@portlandmaine.gov]
Sent: Tuesday, October 13, 2009 2:22 PM
To: gough@archetypepa.com
Subject: Re: The Inn at Diamond Cove

Kevin, Could you give me a call tomorrow? We can talk about this in more detail. I believe the last action we took on this application was for the zone change. If you haven't formally applied for site plan and subdivision review that would be the next step. Anyway lets discuss this further.

>>> "Kevin Gough" <gough@archetypepa.com> Tuesday, October 13, 2009 >>>
 Rick,

I want to touch base with you about re-starting the process for planning approval for the Inn on Great Diamond Island. We now have our DEP permits and sewerage issues resolved, and are preparing our next resubmission to staff for review.

My question for you is whether you could give me your best analysis of where we are currently, to make sure you and I are on the same page. As I see it, the most recent correspondence was the Dept of Planning Memorandum of January 27 in advance of the last workshop hearing. If we are to seek our next hearing, could you tell me what would be a reasonable date for our re-submittal of information to you, based upon the findings of that last meeting? Additionally, was there a letter of findings issued after that meeting? I do not have a record of that.

When you get a moment, maybe we could have a conversation about next steps.

Thank you.

Kevin Gough, Architect

Archetype, P.A.

48 Union Wharf

Portland, ME 04101

Phone: (207) 772-6022

gough@archetypepa.com

<http://www.archetype-architects.com>

Rick Knowland - RE: Great Diamond Island - Building 46

From: "Kevin Gough" <gough@archetypepa.com>
To: "Rick Knowland" <RWK@portlandmaine.gov>
Date: 1/6/2010 9:39 AM
Subject: RE: Great Diamond Island - Building 46

Rick,

I received the comments from Public Services and, now that the holidays are over and I can again re-focus on the project in more detail, I will be formulating a response to provide as an amendment to our application.

In the meantime, could you please give me an update as to our status in getting on a PB agenda?

Thank you.

Kevin Gough, Architect

Archetype, P.A.

48 Union Wharf

Portland, ME 04101

Phone: (207) 772-6022

gough@archetypepa.com

<http://www.archetype-architects.com>

From: Rick Knowland [mailto:RWK@portlandmaine.gov]
Sent: Thursday, December 24, 2009 8:47 AM
To: gough@archetypepa.com
Subject: Fwd: Great Diamond Island - Building 46

Attached are comments from Public Services on the Diamond Cove project.

>>> David Margolis-Pineo Wednesday, December 23, 2009 >>>
Please see attached comments.

Rick Knowland - Inn at Diamond Cove

From: "Kevin Gough" <gough@archetypepa.com>
To: RWK@portlandmaine.gov
Date: 1/19/2010 3:47 PM
Subject: Inn at Diamond Cove
CC: lloyd@archetypepa.com; david@batemanpartnersllc.com
Attachments: Sprinkler System water capacity.pdf

Rick,

Attached is our letter describing the sprinkler system and the water capacity for the Diamond Cove.
Call if you have any questions.
Thanks.

Kevin Gough, Architect

Archetype, P.A.

48 Union Wharf

Portland, ME 04101

Phone: (207) 772-6022

gough@archetypepa.com

<http://www.archetype-architects.com>

Rick Knowland - FW: GDI

From: "Kevin Gough" <gough@archetypepa.com>
To: RWK@portlandmaine.gov
Date: 1/20/2010 11:51 AM
Subject: FW: GDI
Attachments: scan 604.pdf

Rick,

Attached is the revised site plan with added zoning language and a grease trap.
I will follow this with the copies on 11x17.

Kevin

From: Joe Laverriere [mailto:joe@delucahoffman.com]
Sent: Wednesday, January 20, 2010 11:25 AM
To: Kevin Gough; david@batemanpartnersllc.com
Subject: GDI

David and Kevin-

Attached is revised site plan for your review and comment. Kevin, if this is acceptable, then let me know how many copies you will need.

Joseph A. Laverriere, P.E.
Senior Engineer
DeLUCA-HOFFMAN ASSOCIATES, INC.
778 Main Street, Suite 8
South Portland, Maine 04106
T: 207.775.1121 Ext. 133
F: 207.879.0896

This message and any attachments are intended for the individual or entity named above and may contain privileged or confidential information. If you are not the intended recipient, please do not forward, copy, print, use or disclose this communication to others; please notify the sender by replying to this message and then delete it from your system.

CONFIDENTIAL ZONING AMENDMENT

At the Board will recall, last year the Planning Board forwarded a recommendation to the City Council regarding the rezoning of the subject property to allow for construction of a new building. The Council's decision was based on the findings of the Planning Board and the City Council. The Planning Board's recommendation was based on the findings of the Planning Board and the City Council. The Council's decision was based on the findings of the Planning Board and the City Council.

Other Provisions: Building shall be fully sprinkled and a central fire alarm system shall be installed.

Three-year term: Any structure for the project is intended to be a five-year structure. The project shall be completed within five years of the date of the City Council's decision.

Use: The project shall be used for the purpose of the project as shown on the site plan. The project shall be used for the purpose of the project as shown on the site plan.

Site Plan: The site plan shall be submitted to the City Council for review and approval. The site plan shall be submitted to the City Council for review and approval.

Summary Note: The Applicant is required to submit the City in all aspects of the project. The Applicant is required to submit the City in all aspects of the project.

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| FLOOR | UNIT NUMBER | LOCKOUT UNIT (Y/N) |
|----------------|-------------|--------------------|
| FIRST | 101 | Y |
| FIRST | 102 | Y |
| FIRST | 103 | Y |
| FIRST | 104 | Y |
| FIRST | 105 | Y |
| FIRST | 106 | Y |
| FIRST | 107 | Y |
| FIRST | 108 | Y |
| FIRST | 109 | Y |
| FIRST | 110 | Y |
| FIRST | 111 | Y |
| FIRST | 112 | Y |
| FIRST | 113 | Y |
| FIRST | 114 | Y |
| FIRST | 115 | Y |
| FIRST | 116 | Y |
| FIRST | 117 | Y |
| FIRST | 118 | Y |
| FIRST | 119 | Y |
| FIRST | 120 | Y |
| SECOND THIRD | 201 | Y |
| SECOND THIRD | 202 | Y |
| SECOND THIRD | 203 | Y |
| SECOND THIRD | 204 | Y |
| SECOND THIRD | 205 | Y |
| SECOND THIRD | 206 | Y |
| SECOND THIRD | 207 | Y |
| SECOND THIRD | 208 | Y |
| SECOND THIRD | 209 | Y |
| SECOND THIRD | 210 | Y |
| SECOND THIRD | 211 | Y |
| SECOND THIRD | 212 | Y |
| SECOND THIRD | 213 | Y |
| SECOND THIRD | 214 | Y |
| SECOND THIRD | 215 | Y |
| SECOND THIRD | 216 | Y |
| SECOND THIRD | 217 | Y |
| SECOND THIRD | 218 | Y |
| SECOND THIRD | 219 | Y |
| SECOND THIRD | 220 | Y |
| TOTAL UNITS 20 | | TOTAL LOCKOUTS 0 |



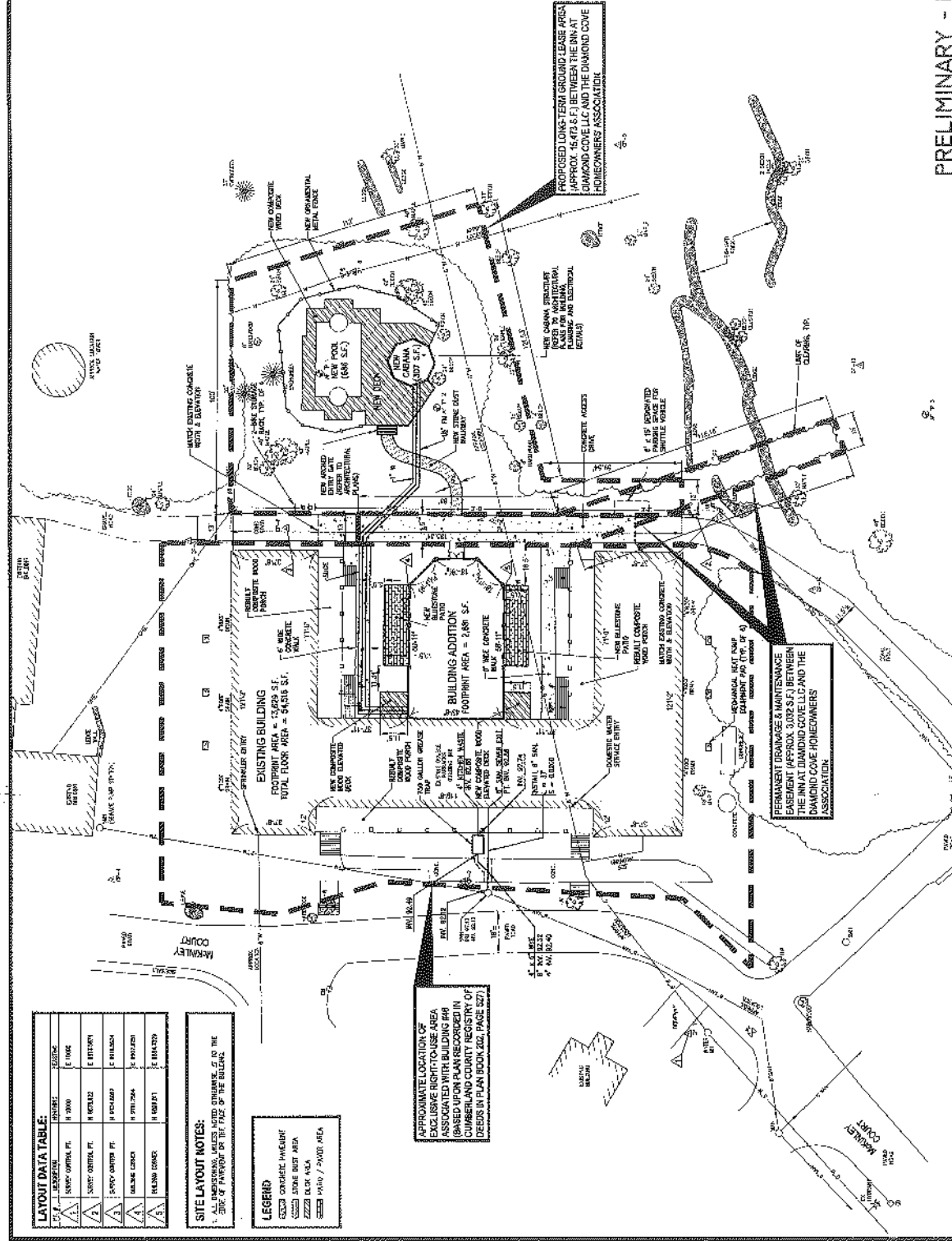
PRELIMINARY - NOT FOR CONSTRUCTION

PROJECT: THE INN AT DIAMOND COVE
SUBJECT: THE INN AT DIAMOND COVE
PREPARED BY: DELUCA-HOFFMAN ARCHITECTS, INC.
DATE: 12/15/2011
SCALE: AS SHOWN
PROJECT NO.: 11-001
DATE: 12/15/2011
SCALE: AS SHOWN
PROJECT NO.: 11-001

DESIGNED BY: DELUCA-HOFFMAN ARCHITECTS, INC.
DATE: 12/15/2011
SCALE: AS SHOWN
PROJECT NO.: 11-001

CHECKED BY: DELUCA-HOFFMAN ARCHITECTS, INC.
DATE: 12/15/2011
SCALE: AS SHOWN
PROJECT NO.: 11-001

APPROVED BY: DELUCA-HOFFMAN ARCHITECTS, INC.
DATE: 12/15/2011
SCALE: AS SHOWN
PROJECT NO.: 11-001



LAYOUT DATA TABLE:

| SYMBOL | DESCRIPTION | NOTES |
|----------|---|-------|
| (Symbol) | EXISTING BUILDING | |
| (Symbol) | BUILDING ADDITION | |
| (Symbol) | PERMANENT DRAINAGE & MAINTENANCE BASEMENT | |
| (Symbol) | CONCRETE PAVEMENT | |
| (Symbol) | ASPHALT DRIVE | |
| (Symbol) | GRAVEL DRIVE | |
| (Symbol) | LANDSCAPE | |
| (Symbol) | CONCRETE DRIVE | |
| (Symbol) | ASPHALT DRIVE | |
| (Symbol) | GRAVEL DRIVE | |
| (Symbol) | LANDSCAPE | |
| (Symbol) | CONCRETE DRIVE | |
| (Symbol) | ASPHALT DRIVE | |
| (Symbol) | GRAVEL DRIVE | |
| (Symbol) | LANDSCAPE | |

SITE LAYOUT NOTES:

- ALL DIMENSIONS UNLESS NOTED OTHERWISE, AS TO THE EDGE OF PAVEMENT OR THE FACE OF THE BUILDING.

LEGEND:

- EXISTING BUILDING
- BUILDING ADDITION
- PERMANENT DRAINAGE & MAINTENANCE BASEMENT
- CONCRETE PAVEMENT
- ASPHALT DRIVE
- GRAVEL DRIVE
- LANDSCAPE
- CONCRETE DRIVE
- ASPHALT DRIVE
- GRAVEL DRIVE
- LANDSCAPE

APPROXIMATE LOCATION OF EXCLUSIVE RIGHT OF USE AREA (BASED UPON PLANS RECORDED IN CUMBERLAND COUNTY REGISTRY OF DEEDS IN PLAN BOOK 202, PAGE 527)

APPROXIMATE LOCATION OF EXCLUSIVE RIGHT OF USE AREA (BASED UPON PLANS RECORDED IN CUMBERLAND COUNTY REGISTRY OF DEEDS IN PLAN BOOK 202, PAGE 527)

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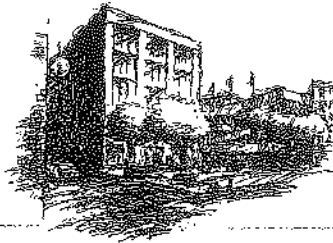
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HARBOR PLAZA

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 |
| Total Spaces | 218 |

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 nd & 3 rd Fl. Hotel 1 Space/ 4 Rms. | 1 |
| - 468 Fore St. (Annex) / Basement for Hotel Use | 0 |
| - 1 st Fl. Retail 1780 sq. ft. – None Required | 0 |
| - 2 nd Fl. Hotel Meeting Rm. – None Required | 0 |
| - 3 rd Fl. 2 – Hotel Rms. – None Required | 0 |
| (See 470 Fore St. Rm. Count) | |
| - 4 th Fl. Offices 1780 sq. ft. / 350 sq. ft. / per Space | 5 |
| Total Spaces Required | 152 |

Summary of Existing Uses:

| | |
|------------------------------------|-----------|
| Total Spaces = | 218 |
| Total Spaces Required = | 152 |
| (By current uses) | |
| <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 - FW: GDI

From: "Kevin Gough" <gough@archetypepa.com>
To: RWK@portlandmaine.gov
Date: 1/20/2010 1:48 PM
Subject: FW: GDI
CC: suemcewen@archetypepa.com
Attachments: W6931-2009.pdf; SLDA L13160ABB.pdf

Rick

Here is some information from the Civil Engineer.

If you need anything more today, please call David Lloyd in my office. I can also be reached by cell phone at 207.232.3858. I will be on the road the rest of today to go to a meeting.

Thanks.

Kevin

From: Joe Laverriere [mailto:joe@delucahoffman.com]
Sent: Wednesday, January 20, 2010 1:14 PM
To: Kevin Gough; lloyd@archetypepa.com
Cc: david@batemanpartnersllc.com
Subject: GDI

Kevin-

As requested, enclosed are pdf copies of the following items:

- Amended Waste Discharge License
- Amended Site Location of Development Act Permit

I will be forwarding the following other pieces of information in subsequent emails:

- Revised Site Plan
- Revised Detail Sheet with Grease Trap Detail added
- Pdf copy of Stormwater management Plan
- Pdf copy of Erosion and Sedimentation Control Plan

Call with any additional questions or comments.

Joseph A. Laverriere, P.E.
Senior Engineer
DeLUCA-HOFFMAN ASSOCIATES, INC.
778 Main Street, Suite 8
South Portland, Maine 04106
T: 207.775.1121 Ext. 133
F: 207.879.0896

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Rick Knowland - FW: DIA COVE RECORDING PLAT PDF'S

From: "Kevin Gough" <gough@archetypepa.com>
To: RWK@portlandmaine.gov
Date: 1/21/2010 12:16 PM
Subject: FW: DIA COVE RECORDING PLAT PDF'S
Attachments: DIAMOND COVE-AMENDMENTS TO RECORDING PLAT.pdf; DIAMOND COVE-AMENDED SGC SURVEY.pdf

Rick,

Attached are two drawings which I feel adequately convey the Subdivision information that we discussed. Please comment.

Thanks.

Kevin Gough

From: Joe Laverriere [mailto:joe@delucahoffman.com]
Sent: Thursday, January 21, 2010 9:19 AM
To: david@batemanpartnersllc.com
Cc: Kevin Gough
Subject: FW: DIA COVE RECORDING PLAT PDF'S

David-

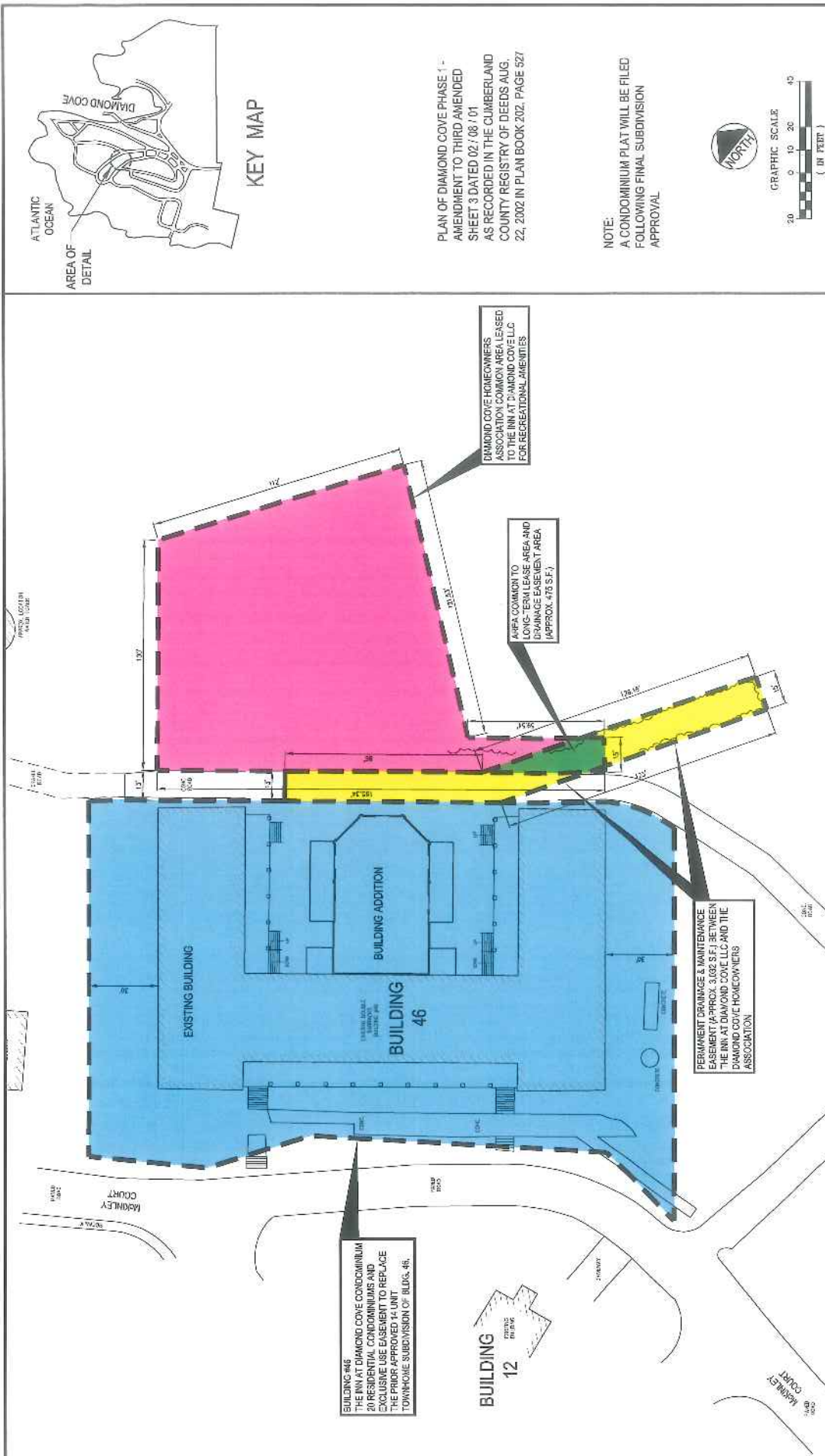
Please review the two attached pdfs. Let me know which one you think is better for providing to the Planning Department or perhaps both.

Joseph A. Laverriere, P.E.
Senior Engineer
DeLUCA-HOFFMAN ASSOCIATES, INC.
778 Main Street, Suite 8
South Portland, Maine 04106
T: 207.775.1121 Ext. 133
F: 207.879.0896

From: Chuck Dube
Sent: Thursday, January 21, 2010 9:00 AM
To: Joe Laverriere
Subject: DIA COVE RECORDING PLAT PDF'S

Chuck Dube
DeLuca-Hoffman Associates, Inc.

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KEY MAP

PLAN OF DIAMOND COVE PHASE 1 - AMENDMENT TO THIRD AMENDED SHEET 3 DATED 02/08/01 AS RECORDED IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS AUG. 22, 2002 IN PLAN BOOK 202, PAGE 527

NOTE:
A CONDOMINIUM PLAN WILL BE FILED FOLLOWING FINAL SUBDIVISION APPROVAL



PROPOSED AMENDMENTS TO DIAMOND COVE RECORDING PLAN

THE INN AT DIAMOND COVE

| | | | |
|------------|---------------------------|----------|----------|
| DRAWN: | CCD | DATE: | 01.27.10 |
| DESIGNED: | JAL | SCALE: | 1" = 40' |
| CHECKED: | JAL | JOB NO.: | 2759 |
| FILE NAME: | 2759.dwg/Permit/02.765-SP | | |

DeLuca-Hoffman Associates, Inc.
770 VAN STREET, SUITE 8
SOUTH PORTLAND, ME 04106
207.775.1121
WWW.DELUCA-HOFFMAN.COM



OWNER: MCKENLE PARTNERS
 1000 PLYMOUTH ST., SUITE 100
 BOSTON, MA 02118

DIAMOND COVE PHASE II

CONTRACT NO. 1000-1000-1000

NOTE TO INTERESTED PARTIES:
 This Plan sheet was previously recorded in the Public Records Office of the Commonwealth of Massachusetts, Book 1394, Page 100, dated 10/10/2000.

EXHIBIT I

NOTE:
 A CONDOMINIUM PLAT WILL BE FILED
 FOLLOWING FINAL SUBDIVISION
 APPROVAL.

DIAMOND COVE HOMEOWNERS ASSOCIATION
 COMMON WEALTH OF MASSACHUSETTS
 1000 PLYMOUTH ST., SUITE 100
 BOSTON, MA 02118

AREA COMMON TO TWO TRACTS, F&S AS SHOWN
 DAMAGE EXISTENT AREA APPROX. 475 SQ. FT.

REPAIRS TO DAMAGE & MAINTENANCE
 SHALL BE THE RESPONSIBILITY OF THE
 COMMON WEALTH OF MASSACHUSETTS

THE UNIT OWNER SHALL BE RESPONSIBLE FOR
 THE MAINTENANCE OF THE COMMON AREAS
 AND SHALL BE RESPONSIBLE FOR THE
 REPAIRS TO THE COMMON AREAS

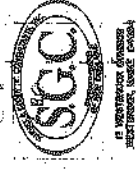
REVISIONS:
 1. 02/03/03 - REVISED PER COMMENTS FROM THE BOARD OF REVIEW.
 2. 02/03/03 - REVISED PER COMMENTS FROM THE BOARD OF REVIEW.
 3. 02/03/03 - REVISED PER COMMENTS FROM THE BOARD OF REVIEW.

GENERAL NOTES:
 1. THIS PLAN IS TO BE CONSIDERED AS A PART OF THE SUBDIVISION PLAT.
 2. THE UNIT OWNER SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE COMMON AREAS AND SHALL BE RESPONSIBLE FOR THE REPAIRS TO THE COMMON AREAS.
 3. THE UNIT OWNER SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF THE COMMON AREAS AND SHALL BE RESPONSIBLE FOR THE REPAIRS TO THE COMMON AREAS.

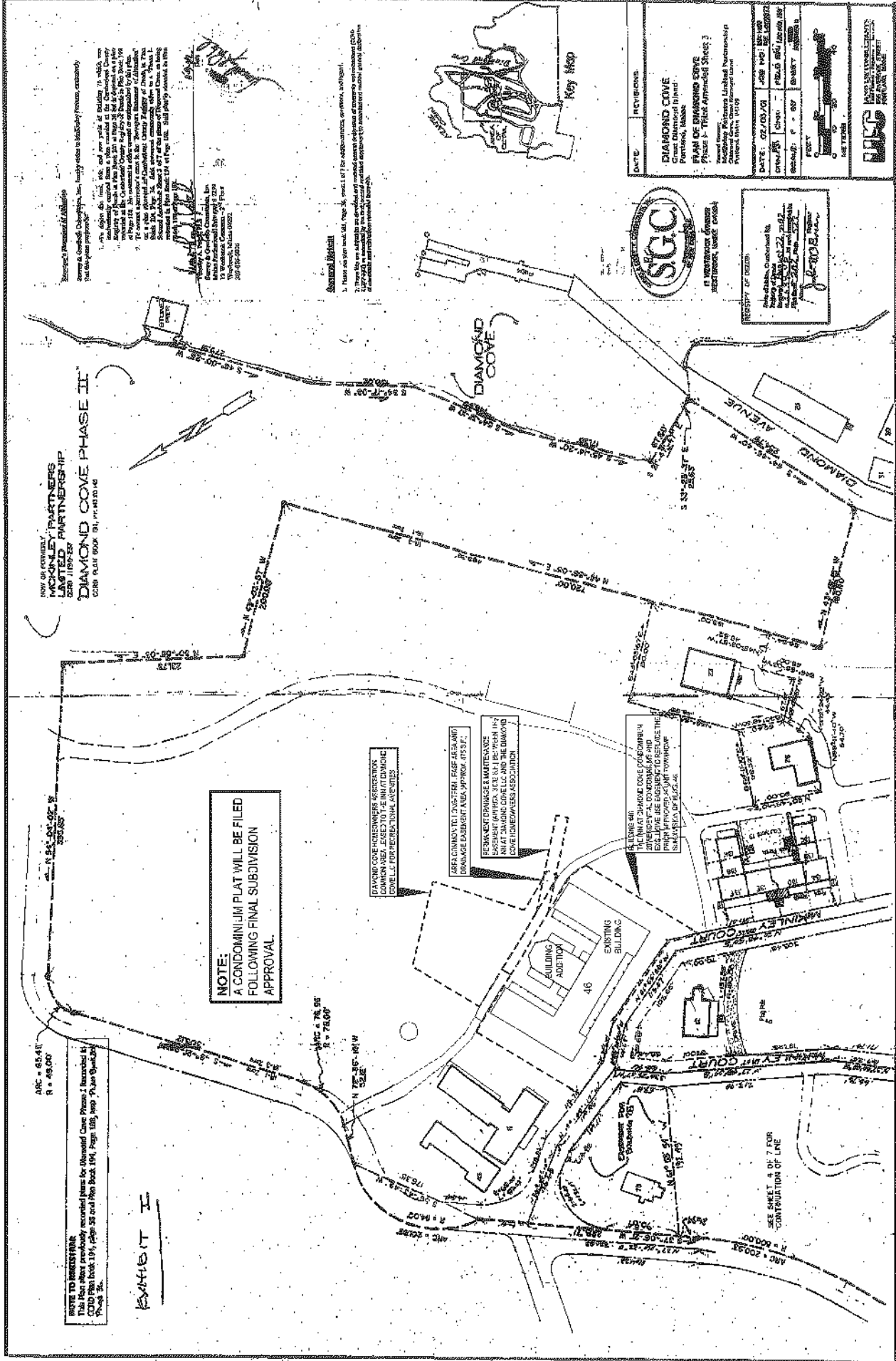
KEY MAP:
 A key map showing the location of the project within the larger context of the surrounding area.



| DATE | REVISIONS |
|----------|--|
| 02/03/03 | REVISED PER COMMENTS FROM THE BOARD OF REVIEW. |
| 02/03/03 | REVISED PER COMMENTS FROM THE BOARD OF REVIEW. |
| 02/03/03 | REVISED PER COMMENTS FROM THE BOARD OF REVIEW. |



PROPERTY OF OWNER:
 MCKENLE PARTNERS
 1000 PLYMOUTH ST., SUITE 100
 BOSTON, MA 02118



Rick Knowland - Great Diamond Island

From: Kevin Gough <gough@archetypepa.com>
To: RWK@portlandmaine.gov
Date: 3/20/2011 11:27 AM
Subject: Great Diamond Island

Rick,

Do you have time this week to sit with me to go through the Inn at Diamond Cove project to re-familiarize ourselves with the job, and to come to agreement on what I still need to get accomplished before I can get us on the agenda for a final vote?

Ideally, I would only need about 30 minutes of your time to make sure we are both on the same page.

Let me know. I am happy to meet you at your office any time this week.

Thanks.

Kevin Gough, Architect

Archetype, P.A.

48 Union Wharf

Portland, ME 04101

Phone: (207) 772-6022

gough@archetypepa.com

<http://www.archetype-architects.com>

SECTION 18
SOLID WASTE

18.0 Overview

The solid waste associated with the renovation and construction of the Inn has been summarized in this section. This section discusses the anticipated solid waste generation and identifies the responsibility for collection, transport, and disposition of this waste.

18.1 Special or Hazardous Wastes on the Site

There are no known special or hazardous wastes associated with the site.

18.2 Construction Debris

The Inn at Diamond Cove will be built to achieve a LEED rating by the USGBC. As part of this rating, the applicant will retain a General Contractor that will be required to supply several roll off dumpsters to handle different types of waste materials for recycling and disposal. The General Contractor for the project will be required to enter into a contract with a licensed solid waste disposal firm for the hauling of all construction and demolition debris related to the project. Mixed construction material waste will be transported to a facility licensed by the MeDEP to accept mixed construction debris. Separate wood debris may be transported to the Biofuels limited facility in Lewiston, Maine. Separated metal/ferrous material shall be transported to Grimmel Industries in Topsham.

Land clearing will include cutting of trees and stump removal. The General Contractor will be required to have the trees chipped or removed for pulp and to grind stumps, brush and trees onsite and use the grindings or chipped material for erosion control mix. The volume of stumps, grubblings, and chipped vegetation that will be generated by the project has been estimated at 200 cubic yards (refer to Attachment A). The general contractor will be required to file appropriate forms with the Maine Forestry Department.

Approximately 145 cubic yards of construction debris (after recycling) will be generated from the construction of the proposed inn.

Concrete and bituminous concrete will either be processed onsite or hauled to an approved recycling facility such as Commercial Recycling in Scarborough, Maine.

18.3 Grit/Sediment Removal

The applicant will enter into a maintenance contract for grit/sediment removal. It is anticipated that catch basin grit/sediments will be removed from the structures and disposed of by the Contractor at a licensed facility.

18.4 Operational Waste Generated

Once the Inn at Diamond Cove is constructed and placed into service, all operational solid waste will be collected at a central location within the Inn. All collected waste is hauled to a central repository on the island by the Diamond Cove Homeowner's Association. The City of Portland collects the refuse from the central repository and hauls it off site for disposal at Eco-Maine.

18.5 Attachments

Attachment A – Computations estimating the volumes of solid waste to be generated and recycled by this project.

ATTACHMENT A

**Computations of Types of Volumes of
Solid Wastes for Project**

SOLID WASTE CALCULATIONS

1. Stumps/Grubbings

The site work will require some clearing of about 0.5 acres of forest.

Assume 400 cy per acre for forests.

$$0.5 \text{ acres of forest at } 400 \text{ cy/acre} = 200 \text{ cy}$$

2. Construction Debris Generated by the Proposed Project

A. Building Renovation

Assume 12 c.y./1,500 s.f. of finished space – $34,000 \times 12/1,500 = 272 \text{ c.y.}$

If 50% is recycled and transported to the facilities listed above, about 136 c.y. of mixed material would go to a licensed facility for disposal.

B. Building Expansion

Assume 10 c.y./1,500 s.f. of finished space – $2,740 \times 10/1,500 = 18 \text{ c.y.}$

If 50% is recycled and transported to the facilities listed above, about 9 c.y. of mixed material would go to a licensed facility for disposal.

3. Operational Waste

Based upon similar hotel facilities owned and operated by the applicant, a 100-room hotel with restaurant facility typically generates 3 tons (60 c.y.) of operational waste on a monthly basis. Therefore, on a per-room basis, the anticipated operational waste volume is 0.03 tons (0.6 c.y.) per month.

The proposed 20-unit inn is anticipated to generate 0.6 tons (12 c.y.) of operational waste on a monthly basis during the peak season (June through September).

Order 55-08/09

Given first reading: 8/18/08 Public Hearing and postponed on 9/3/08

Amended and Passed 9/15/08 (Cohen abstaining)

EDWARD J. SUSLOVIC (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES I. COHEN (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

**ORDER AUTHORIZING AMENDMENT TO
CONDITIONAL ZONE FOR PROPERTY
IN THE VICINITY OF
DIAMOND COVE, GREAT DIAMOND ISLAND
PORTLAND, MAINE**

ORDERED, that the Conditional Zone by and between the City of Portland and The Inn at Diamond Cove LLC and the Diamond Cove Homeowners Association, adopted on _____ and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to read as follows:

**SUPPLEMENTAL CONDITIONS AND RESTRICTIONS
BUILDINGS 46 ("DOUBLE BARRACKS") AND 19 ("HOSPITAL")
FT. MCKINLEY, PORTLAND, MAINE
SEPTEMBER 3, 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")¹, 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").

1. Supplemental Conditions and Restrictions. Notwithstanding the terms of

¹ For purposes of this Supplemental Conditions and Restrictions document, "Owner/Manager" referred to herein shall mean, individuals and collectively, the following: IDC, its successors in interest or assigns; individual unit owners, their heirs, successors in interest and assigns; any and all management company retained by or working on behalf of IDC, its successors or assigns and/or individual units owners and their heirs, successors in interest or assigns.

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 24, 2008 [consisting of four (4) sheets and attached hereto as Attachment 2], all may be redeveloped into individually owned and fully equipped condominium units, sometimes known as "hotelminiums" and a supporting pool/services area on the Open Space. "Hotelminium" is defined as privately owned residential condominium units (with kitchens) located within a structure that offers reasonable and customary on-site hotel services² which are limited to the unit owners, their guests, tenants in residence and members of the DCHA. The Hotelminium 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) hotelminium units [with the maximum number of lock out units, included as part of the twenty hotelminiums and not separate units, not to exceed sixteen (16)] and the Hospital may include up to a maximum of twelve (12) hotelminium units [with the maximum number of lock out units, included as part of the twelve hotelminiums and not separate units, not to exceed twelve (12)]. 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 Double Barracks and the Hospital, both of which may be renovated, are depicted on Attachment 2. The allowable rehabilitation of these buildings may include construction of a new swimming pool and related 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 2 hereto. The recording of the this 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. 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

² For purposes of this Supplemental Conditions and Restrictions document, "reasonable and customary on-site hotel services" shall include but not be limited to laundry service, linen service, room service, health and fitness facilities, food and beverage service, concierge, etc.

facility.

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. 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 hotelminiums. The Owner/Manager shall not provide motorized ground transportation off the Ft. McKinley Project site and the Owner/Manager, its guests, tenants, invitees and employees shall not operate motorized ground transportation of any kind to travel off the Ft. McKinley project site to the pier at the south end of the island except in the event of an emergency. 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 owners, guests and employees will be directed to utilize Casco Bay Lines or private water shuttles arriving at the Diamond Cove landing point or the barge landing point (at the north end of Great Diamond Island) and will be specifically advised not to utilize any off-site facilities, including the pier at the south end of the island. The Owner/ Manager shall conspicuously post, and keep posted in each hotelminium units at the Premises, a written notice of the applicable ordinances, rules and regulations. Moreover, the City shall have no obligation to provide mainland parking for any owner, occupant, guest or invitee of any hotelminium 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. No site plan or subdivision application shall be approved by the City unless and until documentation of Maine DEP approval of the sanitary waste system serving the Premises is provided.

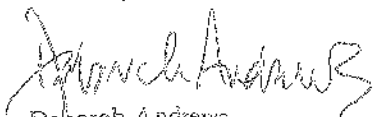
7. Interpretation; Conflicts. The within conditions and restrictions are intended to supplement the existing Conditions and Restrictions and amendments thereto, all of which shall remain in full force and effect except as modified herein or as may be modified by further amendment or ordinance duly enacted 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.

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\GDI 072908to Council.DOC

This Certificate is granted upon condition that the work authorized herein is commenced within twelve (12) months after the date of issuance. If the work authorized by this Certificate is not commenced within twelve (12) months after the date of issuance or if such work is suspended in significant part for a period of one year after the time the work is commenced, such Certificate shall expire and be of no further effect; provided that, for cause, one or more extensions of time for periods not exceeding ninety (90) days each may be allowed in writing by the Department.

Sincerely,



Deborah Andrews
Historic Preservation Program Manager

cc: David Lloyd, Archetype

Applicant's Submittal

January 9, 2009

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

RE: Development Review Application Double Barracks (Building 46) – Great Diamond Island

Dear Rick:

We are submitting our revised and extended application for Development Review on behalf of applicant and owner, The Inn at Diamond Cove, LLC, a Maine limited liability company, for a renovation of and addition to Building No. 46 (Double Barracks) at Diamond Cove, Great Diamond Island.

The building in question is substantially deteriorated and in a state of near abandon. The Double Barracks is planned be fully rehabilitated in accordance with the National Park Service and the Portland Historical Board and shall convert the property to a hotel condominium use together with some limited common amenities consistent with the operations of a hotel. The building itself will house 20 residential units, governed by a newly-formed condominium association. Each of the units shall be considered a "lot" within the Diamond Cove Homeowners Association and will be used for purposes consistent with a residential hotel condominium, including reasonable and customary on-site services limited to the owners, their guests, tenants in residence and members of DCHA. The addition will entail a one story lobby structure in the inner courtyard of the existing building with a three story elevator tower and porch addition on the face of the building in that courtyard.

Located in an IR-3 zone, the addition is a permitted use based upon a Zoning Text Amendment to the Fort McKinley Conditional Zone.

The following is a summary of the current project status:

1. The proposed renovation plans have been reviewed and approved by the National Park Service for compliance with the guidelines for renovations to historic properties.
2. An amended waste water discharge license application has been completed and will be filed with the Maine Department of Environmental Protection this month.
3. An amendment to the existing site location order for the Diamond Cove Project will also be submitted this month to the Maine D.E.P. to allow the proposed renovations.

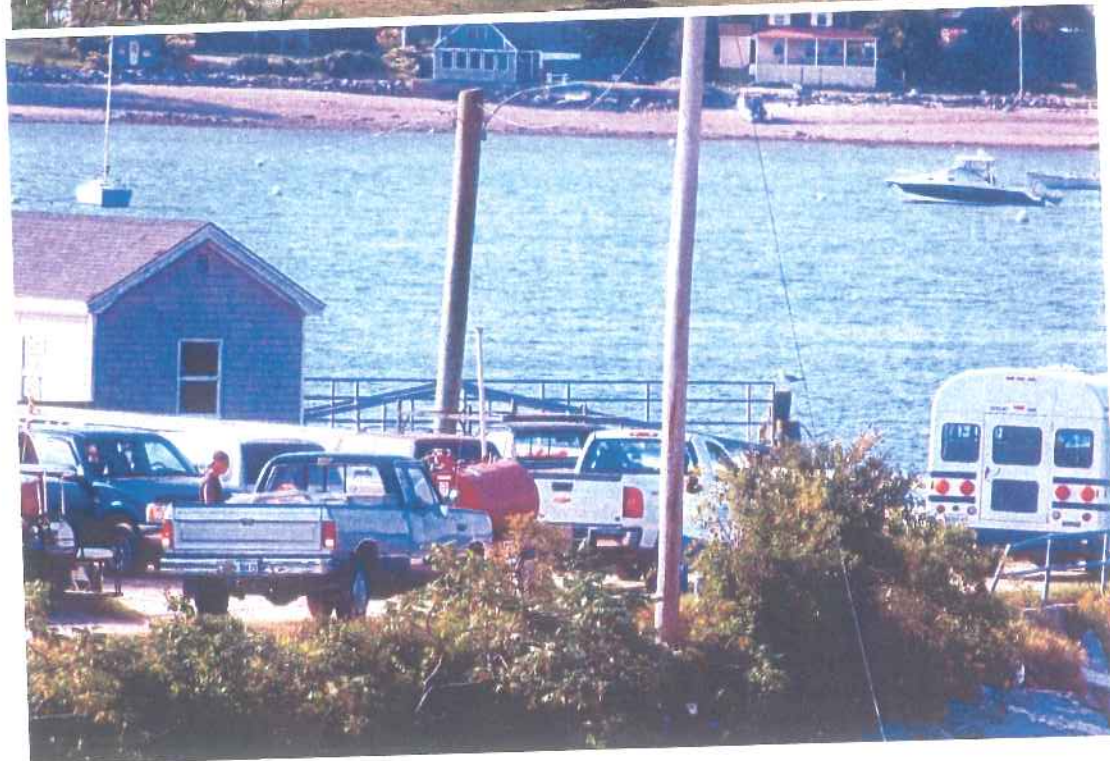
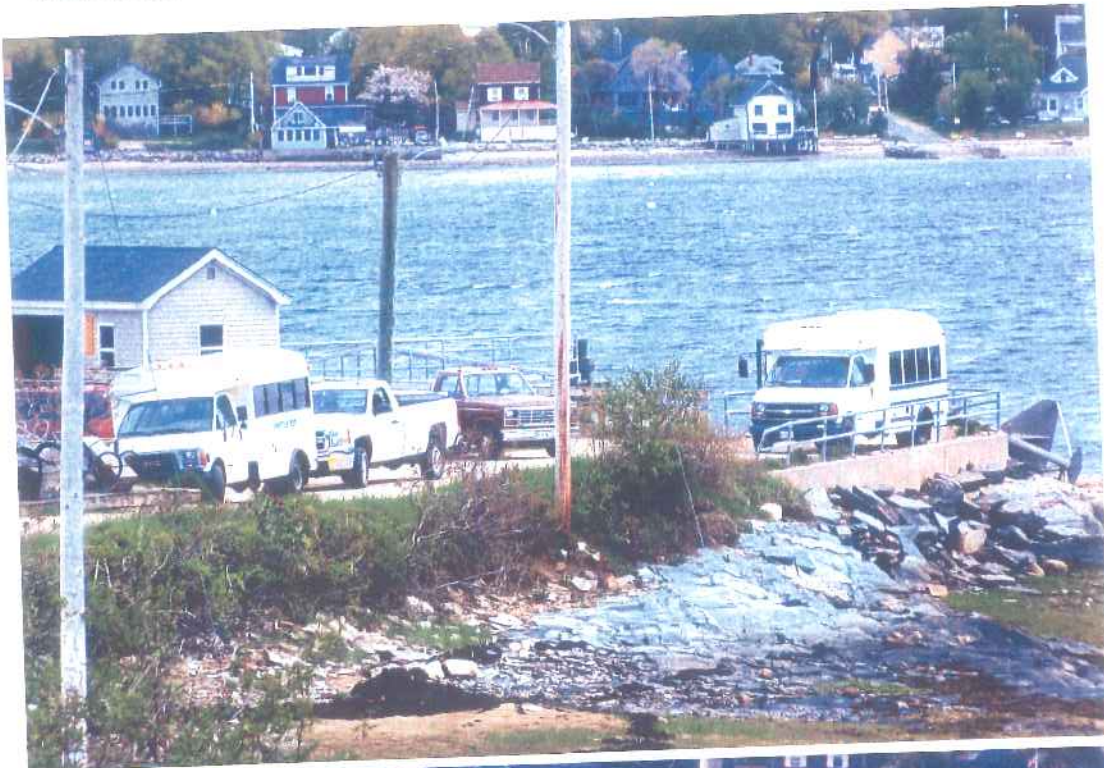
THE FOLLOWING SUBMISSION ITEMS FOR DEVELOPMENT AND SITE PLAN REVIEW ARE LISTED FOR BOTH STATUS AND APPLICABILITY:

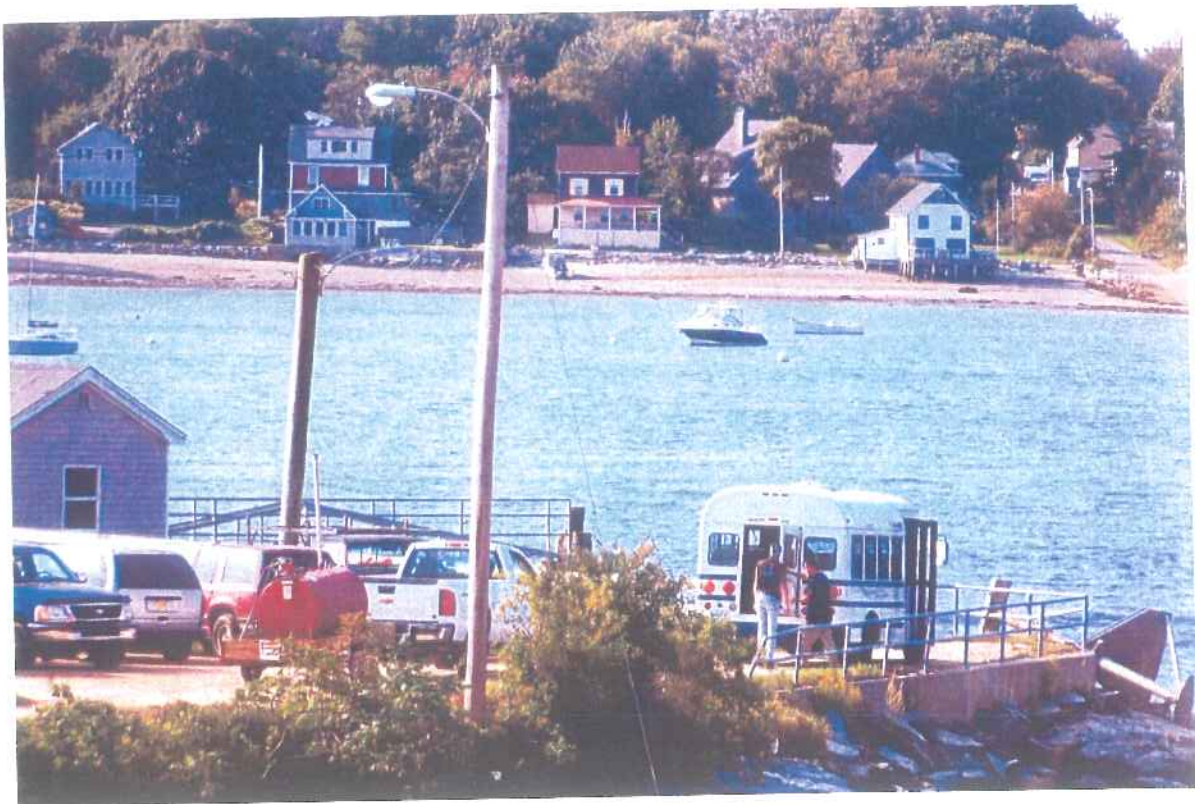
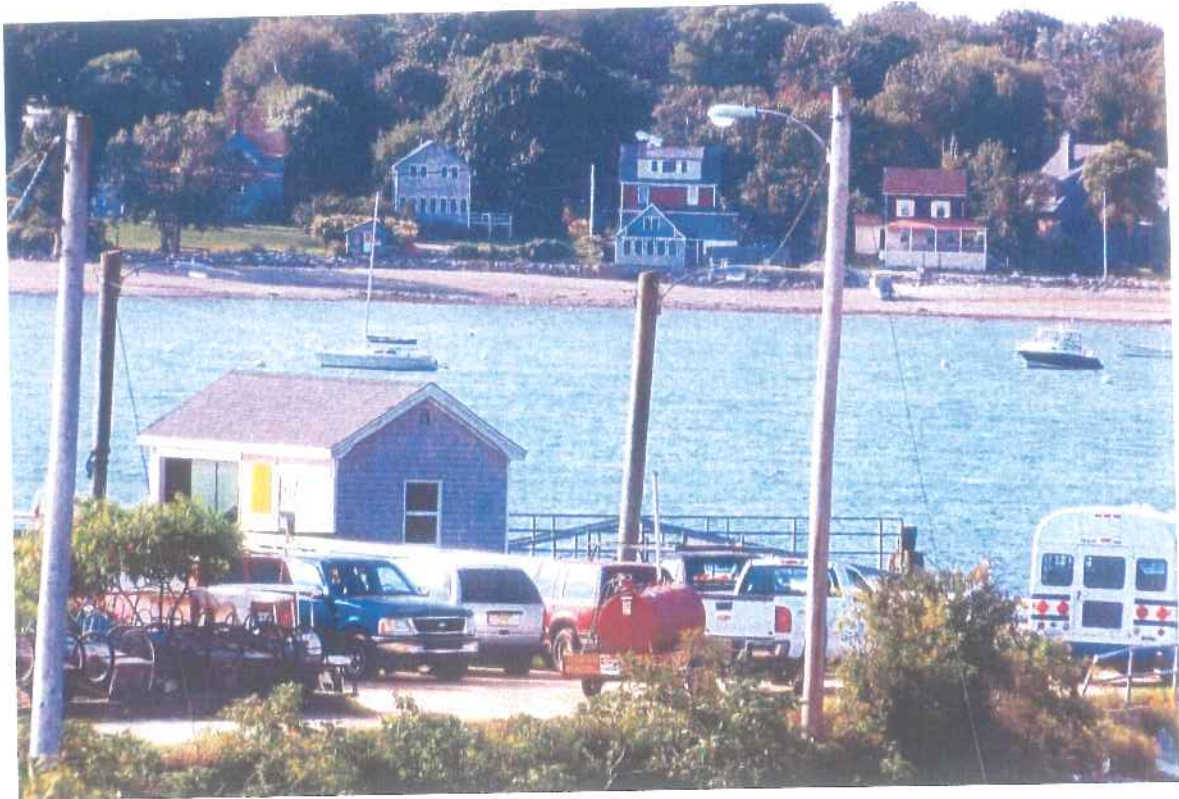
Site Plan Checklist:

1. Standard boundary survey;

Building 46 (Double Barracks) was declared as (14) fourteen lots by the declarant as recorded by amended plans recorded on August 22, 2002 in plan book 202, pages 526-528 "Phase I Plan". A copy of that plan is attached as Exhibit I. This plan reflects a building and lot footprint which can be transferred to each individual owner and a dashed line which represents each lot owner's exclusive right to use area (which is part of the Diamond Cove Home Owners Common Space). The Diamond Cove Home Owners Association increased the number of declared lots in Building 46 from (14) fourteen lots to up to a maximum of (22) twenty-two lots by vote of the

**PICTURES SHOWING DCHA BUSES AND OTHER VEHICLES
CREATING TRAFFIC CONGESTION AT THE STATE PIER**





FLEET OF DCHA VEHICLES



DAMAGE TO NANCY LANE NEAR STATE PIER



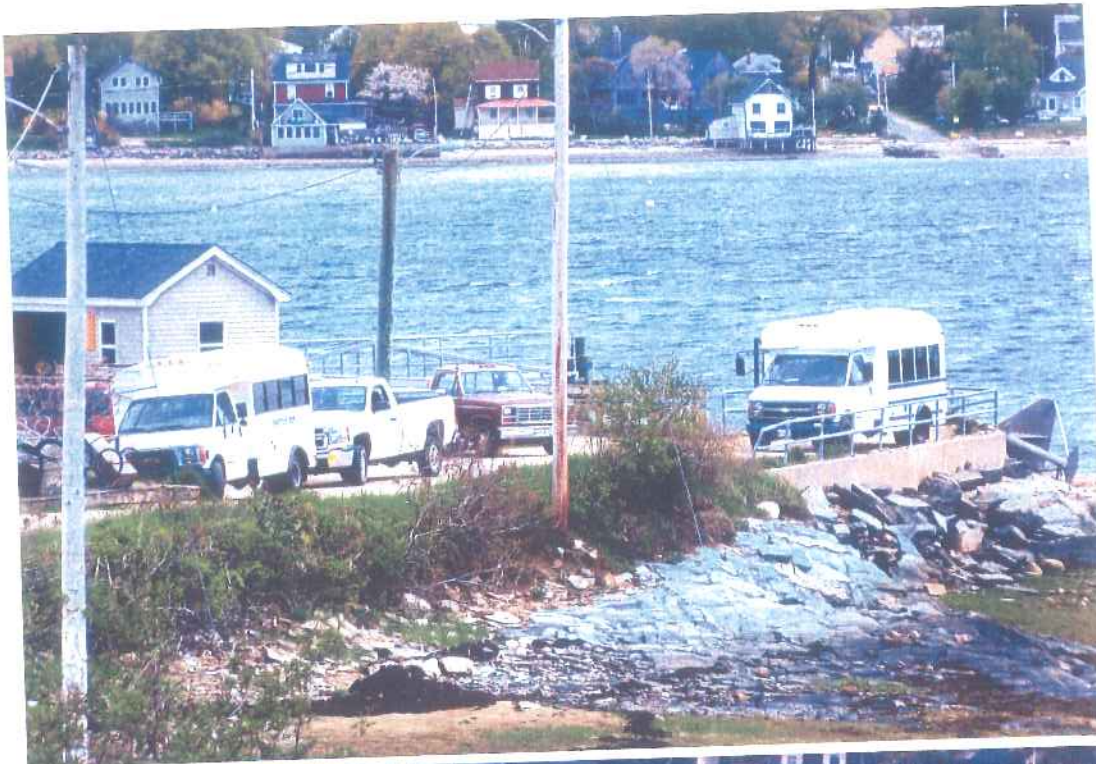


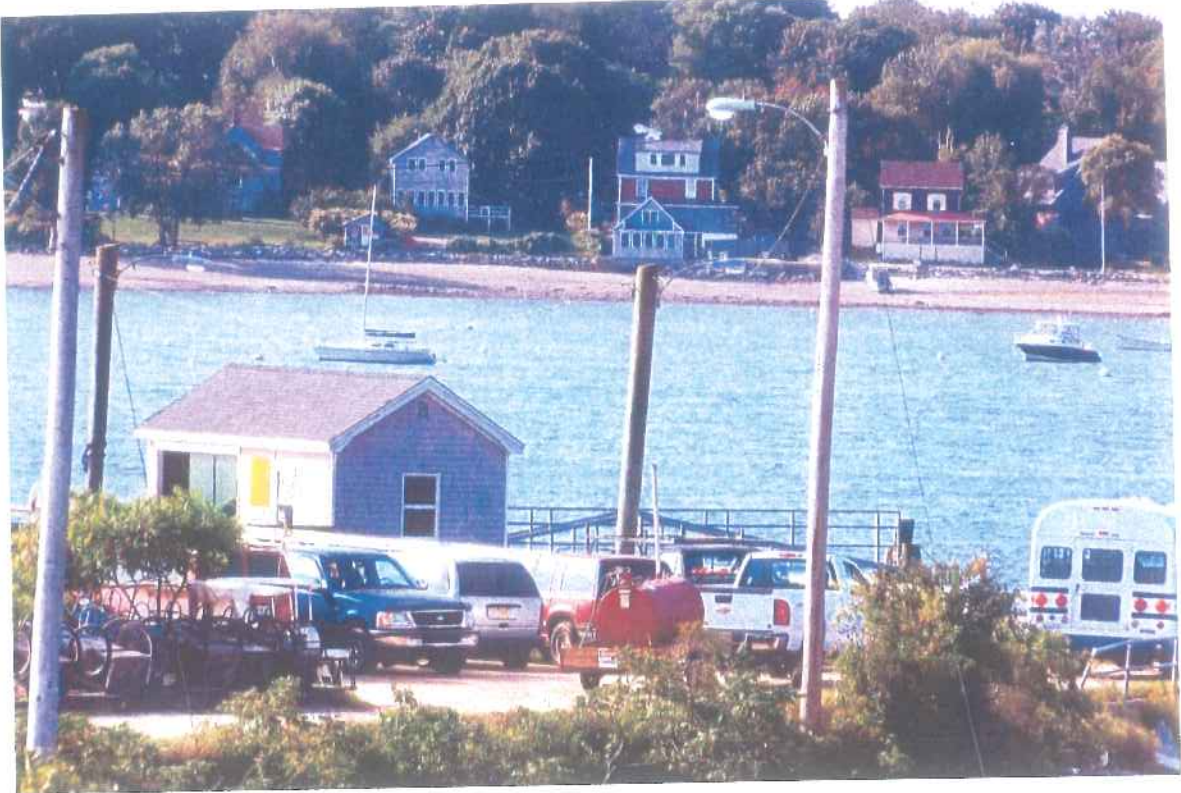






**PICTURES SHOWING DCHA BUSES AND OTHER VEHICLES
CREATING TRAFFIC CONGESTION AT THE STATE PIER**

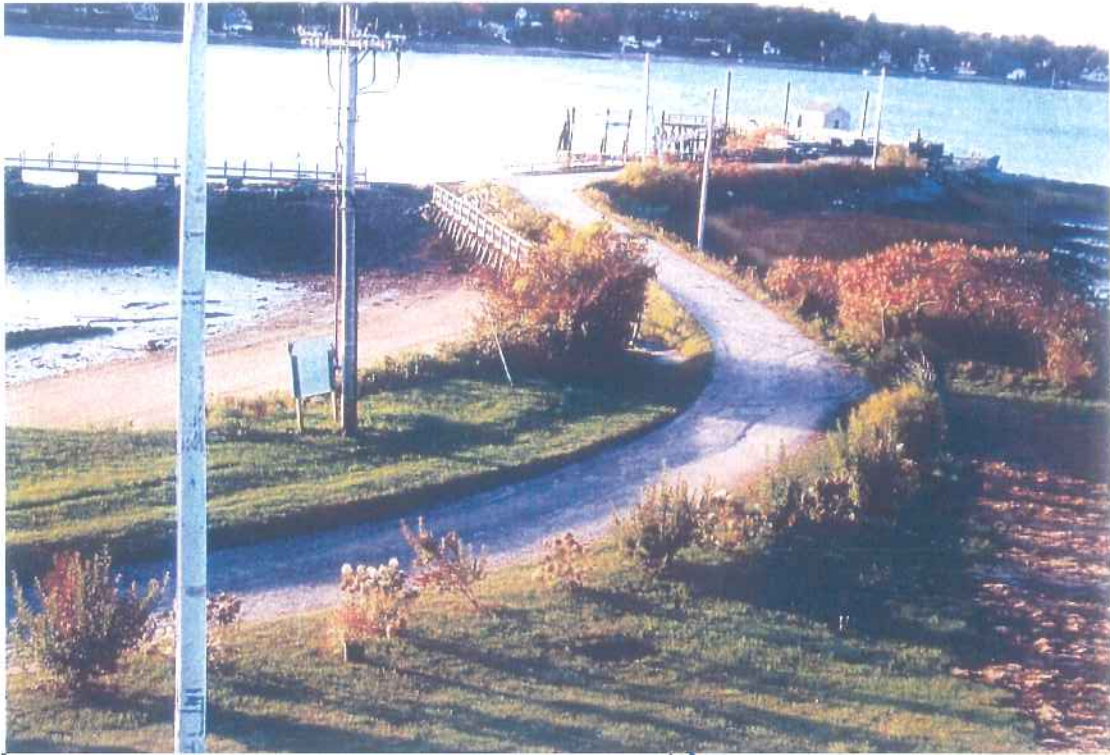




FLEET OF DCHA VEHICLES



DAMAGE TO NANCY LANE NEAR STATE PIER











**PROPOSED CONDITION OF APPROVAL FOR
THE INN AT DIAMOND COVE**

Except in case of a bona fide emergency, no owner, tenant, invitee, or other occupant of any hotelminium unit shall at any time seek or accept transportation by motor vehicle to or from any location within Diamond Cove to or from the State Pier at the southerly side of the Island.

Submitted by John Benson
1-26-10

**PROPOSED CONDITION OF APPROVAL FOR
THE INN AT DIAMOND COVE**

Except in case of a bona fide emergency, no owner, tenant, invitee, or other occupant of any hotelminium unit shall at any time seek or accept transportation by motor vehicle to or from any location within Diamond Cove to or from the State Pier at the southerly side of the Island.

PLANNING BOARD REPORT #44-08

Auto
Conservation easement
for all remaining
open space - work in
good faith to develop
an open space easement
if this should pass.

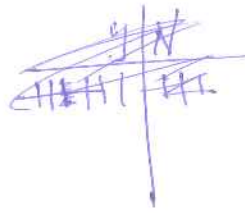
Dan Stohick - compromise
language on transportation
is sufficient

Nick conservation open space
should proceed, regulation
- planning process on conservation
easements.

**PROPOSED IR-3 CONDITIONAL ZONING AMENDMENTS
DIAMOND COVE, GREAT DIAMOND ISLAND
THE INN AT DIAMOND COVE, LLC**

Cheryl +
Dane +
John +
Dan +
Nick +
Eal +

Dick -
Kevin -



6 - 2

**Submitted to:
Portland City Council
Portland, Maine
August 18, 2008**

**Submitted by:
Richard Knowland, Senior Planner**

August 6, 2008

I. Introduction

The Planning Board is forwarding a recommendation to the City Council to approve amendments to the existing Diamond Cove conditional zoning on Great Diamond Island. The applicant is The Inn at Diamond Cove, LLC.

This proposal would allow the renovation and conversion of the “Double Barracks” building and the “Hospital” buildings into residential hotel condominiums. These buildings represent the last significant brick structures not renovated in the Fort McKinley complex. The buildings are deteriorated (particularly the Double Barracks) and this proposal is viewed as the best chance to save these buildings in the near term. The Double Barracks (27,386 sq. ft.) and the Hospital (15,900 sq. ft.) have the largest floor area of any brick building at Diamond Cove.

The Planning Board recommendation is a supplemental document to the existing Diamond Cove conditional zoning. The proposed zoning text applies exclusively to the Double Barracks and Hospital buildings. The original conditional zoning still applies to the existing Fort McKinley development as well as the Double Barracks and Hospital building.

Please note that in various sections of this report (and submitted documents) the terms “residential hotel condominium”, “condominium hotel”, “hotel condominium”, or “hotclminium” are used interchangeably. The names are intended to refer to the same term. The conditional zone text provides a definition for the term.

The Board’s recommended zoning amendment text is shown starting on page 3 of this report and Attachment 2-A.

A vicinity map is shown on Attachment 2-X.

II. Commonly Asked Questions About Diamond Cove

Before discussing the zoning amendment, we thought it helpful to provide answers to some commonly asked questions about the Diamond Cove development and IR-3 conditional zoning. This information is presented below.

What is the size of the Diamond Cove development?

The total land area of the Diamond Cove development is about 190 acres, which occupies the northerly half of Great Diamond Island. The IR-3 zone totals about 92 acres. The IR-3 zone section was approved for 134 dwellings within the historic military buildings although only 77 units have been placed in the buildings to date. The conditional zoning intended to facilitate the rehabilitation of the existing Fort McKinley buildings thus newly constructed buildings were prohibited. Five buildings were originally allocated for commercial uses near the Diamond Cove ferry landing but only a couple of the buildings have been used for that purpose including a restaurant.

The IR-1 single-family section of the development has 39 lots with 34 houses on the lots but isn't part of the IR-3 conditional zone.

In contrast, the remainder of the island (the southerly or village section of the island) had about 72 dwellings as of 2004.

Why was the property zoned IR-3 conditional zoning?

As part of the comprehensive island zoning update in 1985, an IR-3 zoning text was created to address large-scale development on the islands. An IR-3 is a specialized island zone that is enacted with a conditional zone. The IR-3 is the only island residential zone that allows condominiums (attached housing). Converting the military buildings into condominiums was the only feasible way to renovate the historic Fort McKinley buildings. Thus the developer requested IR-3 conditional zoning for the property.

The islands are unique landforms with sensitive environmental features particularly the shoreland areas that ring the island. The land development pattern of an island such as Great Diamond is reflective of a rural village rather than a mainland neighborhood. The special development standards of the IR-3 zone and the ability to use conditional zoning were intended to address the unique physical and natural characteristics of the islands.

The IR-3 conditional zone covers the entire Fort McKinley complex, the main complex of former military buildings around the parade ground and the Diamond Cove pier area.

A copy of the original 1985 conditional zoning is shown on Attachment 2-I.

Have there been other amendments made to the Diamond Cove conditional zoning since the 1985 approval?

Yes, the original conditional zoning has been amended twice.

In 2000, the IR-3 zone was expanded to include lot 44. Lot 44 is located near Diamond Cove and was incorporated into the zone to allow outdoor tent events associated with the Diamond Cove restaurant. A proposal for a beachfront bar (Stowaways) was not approved.

In 2004, the conditional zoning was modified to address golf cart issues within the project.

III. Background of Proposed Zoning Amendment

The IR-3 conditional zoning amendment is proposed by The Inn at Diamond Cove LLC. The applicant would like to convert the existing Double Barracks and Hospital buildings into residential hotel condominium units. A detailed summary of the proposed use is shown on Attachment 2-G.

A residential hotel condominium is not recognized in the zoning ordinance. In their submission the applicant states that "the two buildings are substantially deteriorated and a

collapse of either would not be unexpected.” The applicant views the conditional zoning amendment as an opportunity to renovate these buildings, which has not been possible in the past. Given the deteriorated conditions of these buildings, residential uses have not proven financially feasible. These buildings are the last significant brick buildings within the Fort McKinley complex that have not been renovated. They are also the largest brick buildings in the complex. Renovation of the Fort McKinley buildings was initiated 20 plus years ago.

The City of Portland acquired these two buildings in 2004 for non-payment of property taxes. The City has solicited requests for proposals from developers in the past but this has attracted little interest given the deteriorated conditions of the buildings particularly the Double Barracks. In 2007, the City entered into an option agreement with the applicant to purchase the Double Barracks and Hospital.

In terms of physical development the applicant is proposing the following:

- Renovation and conversion of the Double Barracks building (up to 20 units) and Hospital building (up to 12 units) into residential hotel condominiums;
- A first floor addition is proposed to the rear of the Double Barracks building. The reception/dining area has seating for 56; and
- A plaza area, swimming pool and food/beverage service building is proposed behind the Double Barracks building.

IV. Key Elements of Conditional Zoning Amendment

The applicant’s conditional zoning amendment is intended to facilitate the conversion of the Double Barracks and Hospital buildings into residential hotel condominiums. The text changes involve the following: (1) referencing a residential hotel condominium (hotelminium) as a permitted use, including a definition of the use; (2) use of dedicated open space for a swimming pool and bar/service building; and (3) referencing construction of the bar/service building.

Residential Hotel Condominium Use

The applicant is proposing a residential hotel condominium (hotelminium) use for the Double Barracks building and the Hospital building. A residential hotel condominium is not a recognized use in the zoning ordinance. In an earlier discussion with the applicant the use was described as an inn. However, as each unit will have kitchen facilities this is inconsistent with the zoning definition of an inn.

The applicant indicates “this project proposes individual, residential condominium units, each of which will have its own separate kitchen facilities, together with limited common amenities.” The condominium units will apparently be sold to investors and the individual units rented for public use similar to a hotel or inn room. There is a management entity that will be coordinating this function including providing a van service, security and maintaining the exterior of the building.

allowance for New CONSTRUCTION
Residential uses are allowed, Inns are allowed but cannot have Kitchens, so this hybrid use requires an amendment.

Use of Dedicated Open Space for Swimming Pool and Food/Beverage Building

A swimming pool and gazebo (food service/beverage) building are proposed behind the Double Barracks building. This area is referenced as dedicated open space in the original conditional zoning. See Attachment 2-H.

The proposed amendment references that the swimming pool and food/service building will occupy "dedicated open space."

Newly Constructed Building

Applicant proposes a newly constructed food/beverage service building next to the swimming pool. A phrase in paragraph 1 of the original conditional zoning states "...there shall be no construction or development of any new principal building or structure on the Premises." See Attachment 2-I.

The proposed building is relatively small and might be considered an accessory use, but given the language and intent of the original conditional zone text, the text has been amended to reference that this building is newly constructed.

V. Planning Board Recommended Conditional Zoning Amendment

The Planning Board's recommendation is a "supplemental" document to the existing Diamond Cove conditional zoning. The proposed zoning text applies exclusively to the Double Barracks and Hospital buildings. The original conditional zoning text still applies to the existing Fort McKinley development as well as the Double Barracks and Hospital buildings. The complete Planning Board recommendation is shown starting on page 13 of this report and Attachment 2-A.

VI. Important Issues Associated with the Conditional Zoning

Transportation Service

Transportation is a sensitive issue on Great Diamond Island particularly on the southerly (or public side) of the island. Private automobiles are not permitted with the IR-3 conditional zone. As the Council may recall in 2004, the Diamond Cove Homeowners Assoc. requested an amendment to the conditional zone to allow golf carts/electric vehicles. A zoning amendment was passed but with enforcement provisions to insure that non-service vehicles don't cross the property line into the southerly end of the island.

The applicant intends to operate a separate van transportation service from the van run by the Diamond Cove Homeowners Assoc. (DCHA). Concern was expressed that owners and renters of the residential hotel units would use the southerly (public) pier rather than the Diamond Cove pier. The applicant indicates that the owner/manager will not provide motorized ground transportation off the Fort McKinley site.

The transportation section in the supplemental conditional zoning text was expanded after considerable public comment during the workshops and public hearing. An excerpt of the transportation paragraph is shown below.

“The Owner/Manager shall also provide suitable ground transportation from points of disembarkment within the Project to the hotelminiums. 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 owners, guests and employees will be directed to utilize Casco Bay Lines or private water shuttles arriving at the Diamond Cove landing point or the barge landing (at the north end of Great Diamond Island) and will be specifically advised not to utilize any off-site facilities, including the pier at the south end of the island. All purchasers of units at the Premesis shall receive specific notice of the applicable rules and regulations, including the potential sanctions for failure to comply.”

Wastewater Treatment and Capacity

The capacity of the existing sanitary waste treatment system to accommodate the Double Barracks and Hospital buildings is an important issue. Diamond Cove’s wastewater treatment has been complicated in the past by significant water infiltration which has implications on the amount of water discharged into Casco Bay.

The Diamond Cove project has evolved over a period of time. The original Diamond Cove wastewater treatment system approved by the DEP was designed to accommodate 134 condominium units and 5 commercial uses. As the development was scaled back, the number of sand filter treatment fields was correspondingly reduced.

By 2000, a third sand filter was installed accommodating what was believed to be a total build-out of only 77 condominium units and providing for increased wastewater flows from the Diamond Cove restaurant. The wastewater treatment system is licensed by the DEP to accept and treat 35,000 gallons of waste per day based on a monthly average. The sand filter treatment system has an outfall pipe in Casco Bay. In September 2003, the DEP formally banned new overboard discharges. The existing sand filter treatment system may be maintained but the amount of wastewater flow into Casco Bay may not be increased above the license restrictions.

The applicant’s consultant Joseph Laverriere of Delucca-Hoffman consultant engineers has provided background information on the water infiltration and sewer capacity issue. Mr. Laverriere indicates “the existing uses on the island are estimated to generate 29,335 gpd of wastewater which results in a 5,665 gpd of reserve capacity that is available for the renovation of the Double Barracks and Hospital building, as well as any sources of inflow/infiltration.” Mr. Laverriere has also submitted information on ongoing efforts to reduce infiltration within the sewer pipes and the sandfilter field.

At the time of the Board's public hearing, the applicant had not submitted an application to the Maine DEP regarding the proposal. DEP approval will be required for this project to proceed.

Commercial Uses Near Diamond Cove Ferry Landing

The original development plan for Diamond Cove focused on commercial uses near the ferry landing. The plan projected 5 commercial uses including a restaurant and store near this area.

The proposed residential hotel condominium is located near the parade ground, which is a departure from the original concept. The Double Barracks building will have its own swimming pool and small bar/service building. A residential hotel is closer to a residential use than a commercial use, the primary difference being the more transient nature of rented hotel rooms.

Condominium Hotel Floor Plan

The applicant submitted a floor plan for the 3 floors of the Double Barracks building. A cover letter accompanying the plans indicates there are 6 one bedroom units, 6 two bedroom units and 8 three bedroom units for a total of 20 units. Within the 20 units there are bedrooms having separate and connecting doorways to hallways which provides the capability for "lock-out" rental units. The zoning text states:

"The Hotelminium 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 zoning text allows a total of 16 lock-out units (included in the 20 units) which brings the total number of hotel units to 36 for the Double Barracks building. The Hospital building may have up to 12 hotelminium units with upto 12 lock-out units.

The first floor plans indicate the building addition will have a dining /reception area with a capacity for 14 tables serving 56 people. The applicant indicates this will be a private hotel restaurant and that a continental breakfast may be served as well as other catered meals. The DEP will be reviewing whether the restaurant is consistent with the wastewater discharge license in terms of wastewater volume and number of seats.

VII. Land Use Policy Implications

The primary policy document for the islands is **Portland Islands Land Use and Zoning Study**, which was adopted by the City Council (1985) as an element of the City Comprehensive Plan. The original Diamond Cove conditional zoning was enacted pursuant to this plan.

The summary and goal statement of the island comprehensive plan is expressed below:

The islands are different from the mainland in terms of the natural features, their resource value, the public services available (or possible), the people who reside and work there. The City's land use policies and regulations should reflect this essential difference.

The overall land use goal is to balance future growth and development on the islands to preserve those essential natural, physical, and social factors that contribute to the islands unique value and character.

The purpose of the IR-3 Island Residential Zone as expressed in the comprehensive plan is shown below:

The purpose of the IR-3 would be to allow for planned unit development in a manner compatible with both the natural and built environment. Parcels should not be rezoned to IR-3 unless an applicant can demonstrate that a development plan for the site can meet a series of detailed location and performance standards and is part of a contract or conditional rezoning. These standards would provide guidance to the City on whether a specific site would be appropriate for an IR-3 rezoning.

The comprehensive plan discussion for the IR-3 Contract-Conditional Zoning is shown below:

All IR-3 rezoning should be subject to contract or conditional zoning. Contract zoning is critical to the IR-3 rezoning process in that if a development plan for a proposed rezoning met the IR-3 review standards, the City would require that the zone change be subject to certain conditions through contract zoning that would insure that the final development for the site was in conformity with the land use policies represented in the IR-3 standards. This zoning tool can insure that the representations and assertions of a particular zone change application and development plan that served as the basis for granting the rezoning, are formally carried out in the context in which it was approved. Given the sensitive environmental issues and development constraints on the islands, it is not in the interest of the City to approve an IR-3 without appropriate assurances that the ultimate development for the site appropriately addresses such development constraints.

The purpose section of the IR-3 Zone (zoning text sec. 14-145.13) is shown below. See also Attachment 2-H, which includes the purpose section of the IR-3 zone and the review standards discussed below.

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 above paragraph also includes sec. 14-145.13(e), which states:

- (e) The development plan should have the capability of meeting the development review standards of sec. 14-145.16.

Although Diamond Cove is an existing IR-3 conditional zone and the hotel condominium proposal represents an amendment to the conditional zone text, the hotel condominium proposal should demonstrate the “capability” of meeting these standards. Without evidence of such capability, we risk that the proposed change is inconsistent with these standards and policy intent of the comprehensive plan.

A discussion of review standards particularly relevant to this application is provided below that should be considered in the context of the zone change proposal.

Sanitary Waste. The developer has submitted information on wastewater capacity for the sanitary waste system suggesting that adequate capacity exists and that there has been an ongoing effort to rehabilitate the sewer system to reduce infiltration. See previous discussion starting on page 6. In an ideal scenario, the developer would have already submitted an application to the DEP which would have informed the review process. Nevertheless, Diamond Cove development has an existing and functioning sanitary waste system that is licensed by the DEP. The DEP has its’ own set of regulations and requirements that will determine whether this proposal is in compliance (or with modifications) can be in compliance with the existing wastewater license.

The sanitary waste standard (sec. 14-145.16[c]) is shown on Attachment 2-H-4.

Recreation and Open Space. The applicant intends to use land area for the swimming pool and service building on land designated as dedicated open space.

Sec. 14-145.16(g) of the IR-3 development standards (recreation and open space) states:

“All open space on the site shall be functionally integrated into the development plan by virtue of such features as passive and recreational opportunities, accessibility to residents, preservation of natural site amenities and resources...”

It is our understanding that this land now owned in common by DCHA will be leased by The Inn at Diamond Cove. Given the size and location of this open space it is unlikely this loss of land (as common area) will adversely affect open space resources within Diamond Cove.

Environmentally Sensitive Areas. The construction of the swimming pool and service building will result in disturbance to an area designated as open space behind the Double Barracks building. The environmentally sensitive areas standard sec. 14-145.16(f) is shown on Attachment 2-H-4.

The site disturbance caused by the swimming pool and service building is relatively minor in the context of the total open space being conserved within the Diamond Cove IR-3 property. The “significant resources” cited in the above standard has been preserved

on other locations of the Diamond Cove site. It is unlikely this particular site would be rated as significant in terms of its natural features. The amount of vegetation likely to be disturbed within the footprint of the swimming pool/service building area is minimal in the context of the total vegetation preserved for the Diamond Cove development.

VIII. Other Issues

There are certain development issues related to the project that are better classified as site plan related issues. Assuming the zone change is approved, the Planning Board can review these issues in more detail. These issues are discussed below.

Mainland Parking. A letter has been received from the Portland Harbor Hotel indicating “the Portland Harbor Hotel, acting as Manager for the proposed Inn at Diamond Cove, will provide mainland parking for the island guests. The Portland Harbor hotel has adequate excess parking available through both its on and off parking leases”. This information will need to be submitted during the site plan review process.

Solid Waste Disposal. By terms of the original conditional zoning text (paragraph 6) Diamond Cove is responsible for providing its own solid waste service. At some point Public Works voluntarily provided this service. In discussing the Double Barracks and Hospital proposal with Michael Bobinsky (Director of Public Services) he indicates the City will not be able to provide solid waste service for these new buildings.

Emergency Services. A concern had been expressed by a resident that the three story Double Barracks are too tall to be serviced by the existing fire truck on Great Diamond Island. It is our understanding that the building will have sprinklers and a central fire alarm system. Staff attended a Great Diamond Island Advisory meeting in which Fire Chief Fred LaMontagne was asked about fire protection issues for this building. His response was that sprinklers were a better fire suppression tool than a fire truck. He indicated that sprinklers and a central fire alarm system would be required for the building. The conditional zoning text requires a central fire alarm system and sprinkler.

IX. Development Review

If the conditional zoning amendment were to pass, conversion of the Double Barracks and Hospital buildings require Planning Board subdivision and site plan review.

X. Public Process

The Planning Board held two workshops on this application on April 22, 2008 and May 13, 2008. The public hearing was held on June 24, 2008.

All property owners on Great Diamond Island were sent notice of the workshops and public hearing. A total of 336 notices were sent to area property owners and interested parties for each meeting.

Written public comment submitted to the Planning Board is shown as Attachment 3.

Of particular concern to many residents was the issue of motorized vehicles associated with the hotel condominium using the southerly (public) pier rather than the Diamond Cove pier. The zoning text was revised to address this concern.

A neighborhood meeting was held by the applicant on May 20, 2008.

XI. Planning Board Recommendation

At a public hearing held on June 24, 2008, the Planning Board voted 3 to 2 (Lowry, Lewis and Patterson in favor; Silk and Hall opposed; Tevanian and Odakara absent) on the following motion:

The proposed amendments to the Diamond Cove conditional zoning text (as further revised by the Planning Board, see page 13 of this report or Attachment 2-A) is in conformance with the City of Portland Comprehensive Plan and therefore recommends approval of the proposed text amendments to the City Council with a number of conditions/additions. The revisions have been incorporated in the proposed zoning text and are highlighted below.

The maximum occupancy of building #46 (Double Barracks) shall be stated as 20 hotel units with a maximum potential of 16 lock-out units which are part of the 20 units (and not separate units) and that building #19 (Hospital) shall be limited to 12 hotel units with a maximum 12 lock-out units. ✓

The applicant's statement and representations in regards to the prohibition of transportation to the southerly (public pier) be incorporated into paragraph 5 of the proposed text. ✓

The text should be clarified regarding the meaning of the responsibilities of the owner/manager (who it applied to) in paragraph 5. ✓

The submitted Supplemental Conditions and Restrictions including an amendment to paragraph 2 and an amendment to paragraph 6 be incorporated into the conditions as drafted by Corporation Counsel. ✓

That the site plans as presented to the Planning Board at the June 24, 2008 public hearing and consisting of 4 boards shall be incorporated as part of the site plan. ✓

The Planning Board's final motion also incorporated a statement that "the Planning Board expresses no opinion to the applicant's ability in its proposal to meet the applicable subdivision and site plan standards." ✓

A motion to recommend approval of a fully amended version of the original 1985 Diamond Cove conditional zoning text which included an editing of outdated language was tabled by the Board since it posed confusion with The Inn At Diamond Cove amendments.

Attachments

- 1 Applicant Submissions**
 - 1-A Applicant's Conditional Zoning Amendment Proposal... Superseded by Planning Board recommendation see page 13 of Planning Board Report or attachment 2-A.
 - 1-B Zoning Amendment Application, dated 4-08-08
 - 1-C Cover letter dated 4-08-08
 - 1-D Memorandum from The Inn At Diamond Cove dated 4-29-08
 - 1-E Property Purchase and Sale Agreement
 - 1-F Diamond Cove Homeowners Assoc. Agreement regarding The Inn at Diamond Cove dated 8-13-07
 - 1-G Letter from Joseph Laverriere (DeLuca-Hoffman) on wastewater treatment capacity dated 4-29-08
 - 1-H Memorandum from Ronald Ward on Ft. McKinley Settlement Agreement dated 5-29-08
 - 1-I Memorandum from Ronald Ward on Ft. McKinley Settlement Agreement dated 4-29-08
 - 1-J Letter from Gerard Kiladjian (Portland Harbor Hotel) on mainland parking dated 4-29-08
 - 1-K Letter from David Lloyd (Archetype) regarding sprinkler and code requirements dated 4-28-08
 - 1-L Building elevations and floor layout plan
 - 1-M Bateman Partners LLC development experience
 - 1-N Letter from Joseph Laverriere (DeLuca Hoffman Assoc) on wastewater capacity dated 5-22-08
 - 1-O Letter from Bank North
 - 1-P Applicant's neighborhood meeting
- 2 Staff Comments/Submissions**
 - 2-X Maps
 - 2-A **Planning Board Recommended Conditional Zoning Amendment (Supplemental Conditions and Restrictions)**
 - 2-B The Inn at Diamond Cove brochure received in Planning Office in 2007
 - 2-C Letter from Alexander Jaegerman to Ronald Ward dated 8-15-07
 - 2-D E-mail from Richard Knowland to Ronald Ward dated 4-9-08
 - 2-E E-mail from Richard Knowland to Ronald Ward dated 4-11-08
 - 2-F Letters from Michael Demarest, Maine DEP, dated 5-21-08 and 7-08-08
 - 2-G IR-3 Zoning Text
 - 2-H Diamond Cove original 1985 conditional zoning text
- 3 Written Public Comments**

EDWARD J. SUSLOVIC (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES J. COHEN (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

**ORDER AUTHORIZING AMENDMENT TO
CONDITIONAL ZONE FOR PROPERTY
IN THE VICINITY OF
DIAMOND COVE, GREAT DIAMOND ISLAND
PORTLAND, MAINE**

ORDERED, that the Conditional Zone by and between the City of Portland and The Inn at Diamond Cove LLC and the Diamond Cove Homeowners Association, adopted on _____ and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to read as follows:

**SUPPLEMENTAL CONDITIONS AND RESTRICTIONS
BUILDINGS 46 (“DOUBLE BARRACKS”) AND 19 (“HOSPITAL”)
FT. MCKINLEY, PORTLAND, MAINE
SEPTEMBER 3, 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”)¹, 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 24, 2008 [consisting of four (4) sheets and

¹ For purposes of this Supplemental Conditions and Restrictions document, “Owner/Manager” referred to herein shall mean, individuals and collectively, the following: IDC, its successors in interest or assigns; individual unit owners, their heirs, successors in interest and assigns; any and all management company retained by or working on behalf of IDC, its successors or assigns and/or individual units owners and their heirs, successors in interest or assigns.

attached hereto as Attachment 2], all may be redeveloped into individually owned and fully equipped condominium units, sometimes known as "hotelminiums" and a supporting pool/services area on the Open Space. "Hotelminium" is defined as privately owned residential condominium units (with kitchens) located within a structure that offers reasonable and customary on-site hotel services² which are limited to the unit owners, their guests, tenants in residence and members of the DCHA. The Hotelminium 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) hotelminium units [with the maximum number of lock out units, included as part of the twenty hotelminiums and not separate units, not to exceed sixteen (16)] and the Hospital may include up to a maximum of twelve (12) hotelminium units [with the maximum number of lock out units, included as part of the twelve hotelminiums and not separate units, not to exceed twelve (12)]. 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 Double Barracks and the Hospital, both of which may be renovated, are depicted on Attachment 2. The allowable rehabilitation of these buildings may include construction of a new swimming pool and related 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 2 hereto. The recording of the this 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. 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.

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.

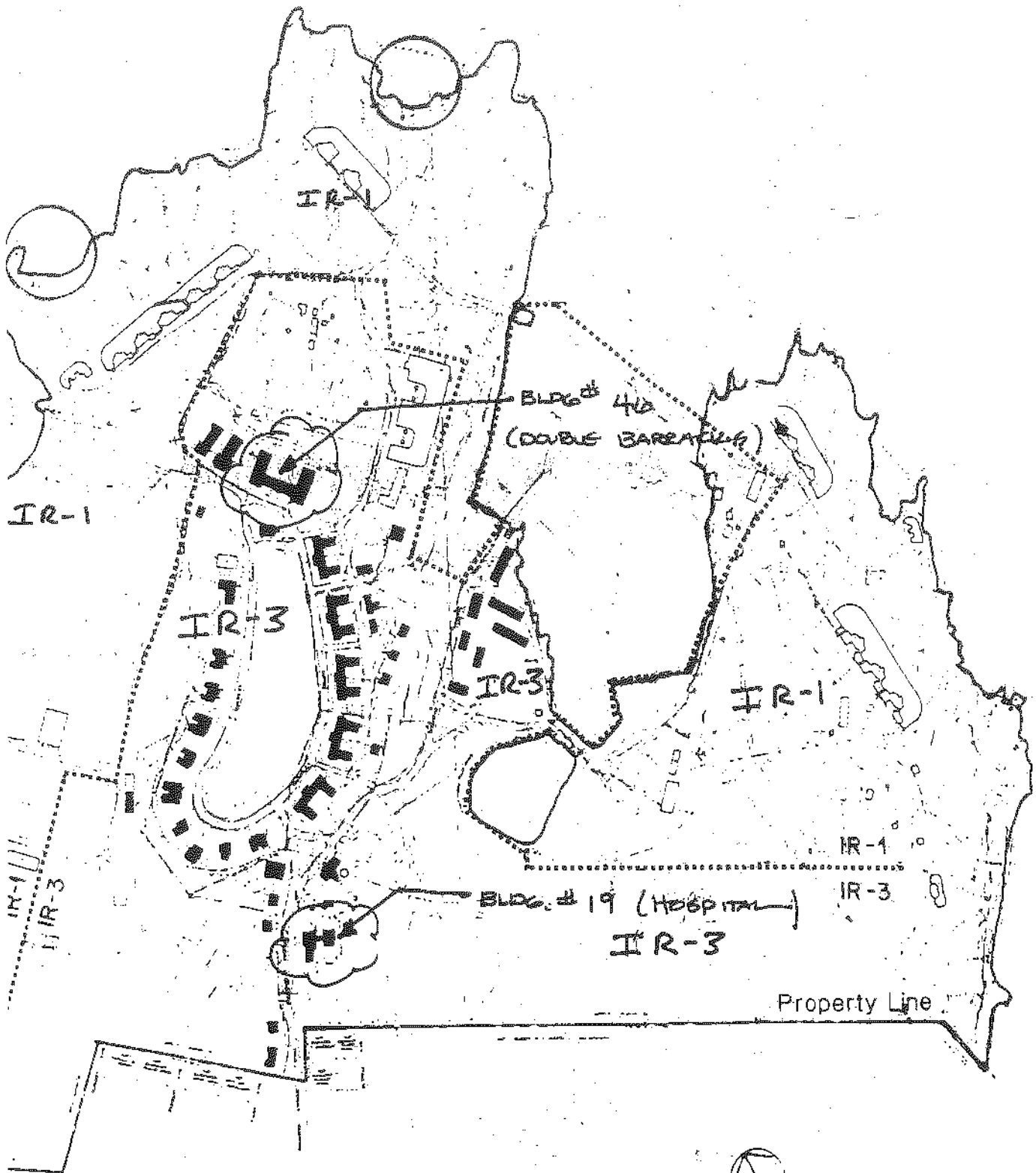
5. Transportation Services. The Owner/Manager of the Premises shall use its best efforts to secure from the Casco Bay Island Transit District year-round common carrier water transportation service to, from and between the Portland waterfront and the Diamond Cove Pier (or barge landing where appropriate for passengers and/or cargo) on

² For purposes of this Supplemental Conditions and Restrictions document, "reasonable and customary on-site hotel services" shall include but not be limited to laundry service, linen service, room service, health and fitness facilities, food and beverage service, concierge, etc.

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 hotelminiums. 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 owners, guests and employees will be directed to utilize Casco Bay Lines or private water shuttles arriving at the Diamond Cove landing point or the barge landing point (at the north end of Great Diamond Island) and will be specifically advised not to utilize any off-site facilities, including the pier at the south end of the 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 hotelminium unit or any manager or on-site staff thereof. //

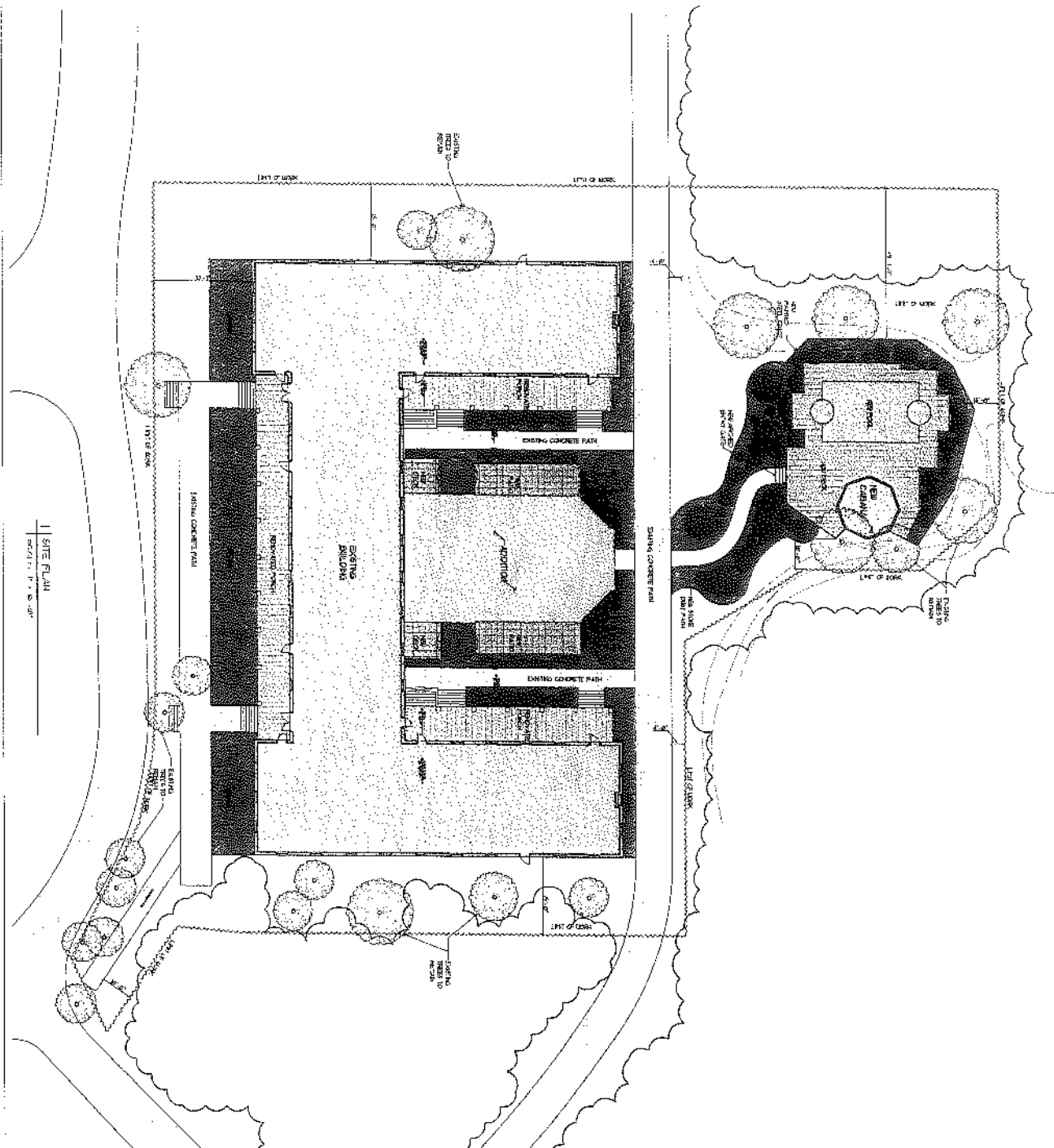
6. Disposal of Sanitary Waste. The IDC is obligated hereunder to involve the City in all aspects of its sanitation waste licensing, and any modifications thereto, with any local, state or federal agency. This includes providing the City with copies of all information submitted to said agencies and involving the City in all meetings and discussions concerning sanitary waste disposal. No site plan or subdivision application shall be approved by the City unless and until documentation of Maine DEP approval of the sanitary waste system serving the Premises is provided.

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.

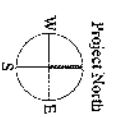


Property Plan

Scale 1" = 500'



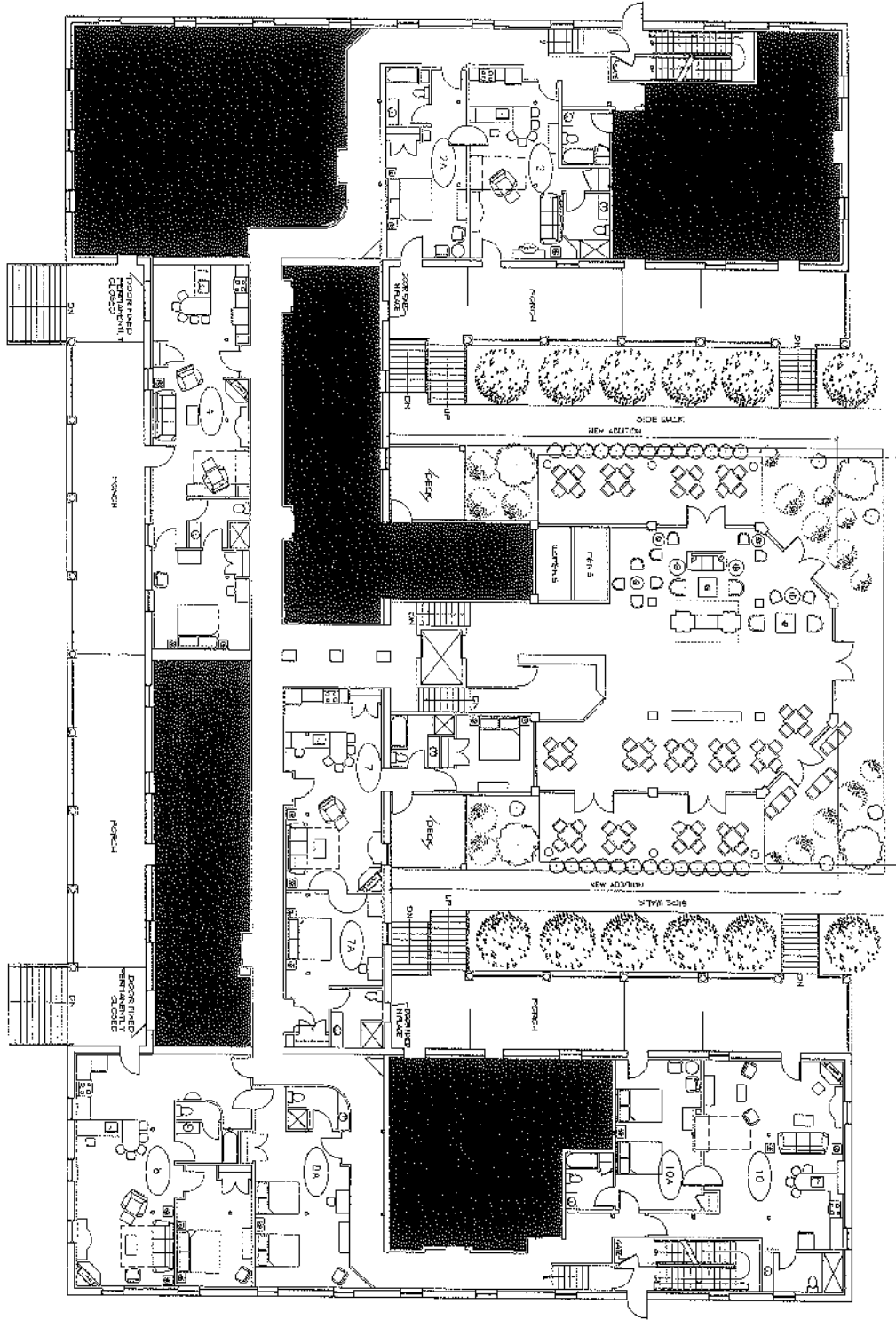
1 SITE PLAN
SCALE: 1/8" = 1'-0"



| | | | | | | |
|--------|----------------------|------------|--------------|--|---|---|
| A-0.10 | NOT FOR CONSTRUCTION | Date: | Scale: | Project: | Architect: | Owner: |
| | JUNE 24, 2009 | Revisions: | 1/8" = 1'-0" | THE INN AT DIAMOND COVE, LLC | ARCHETYPE ARCHITECTS, P.A. | BATEMAN PARTNERS, LLC |
| | | | | <small>McKaleys Ct., Great Diamond Island, Maine</small> | <small>46 Union Wharf Portland, Maine 04103 (207) 772-6022 Fax (207) 772-4058</small> | <small>241 Commercial Street Portland, ME 04103</small> |

① FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"

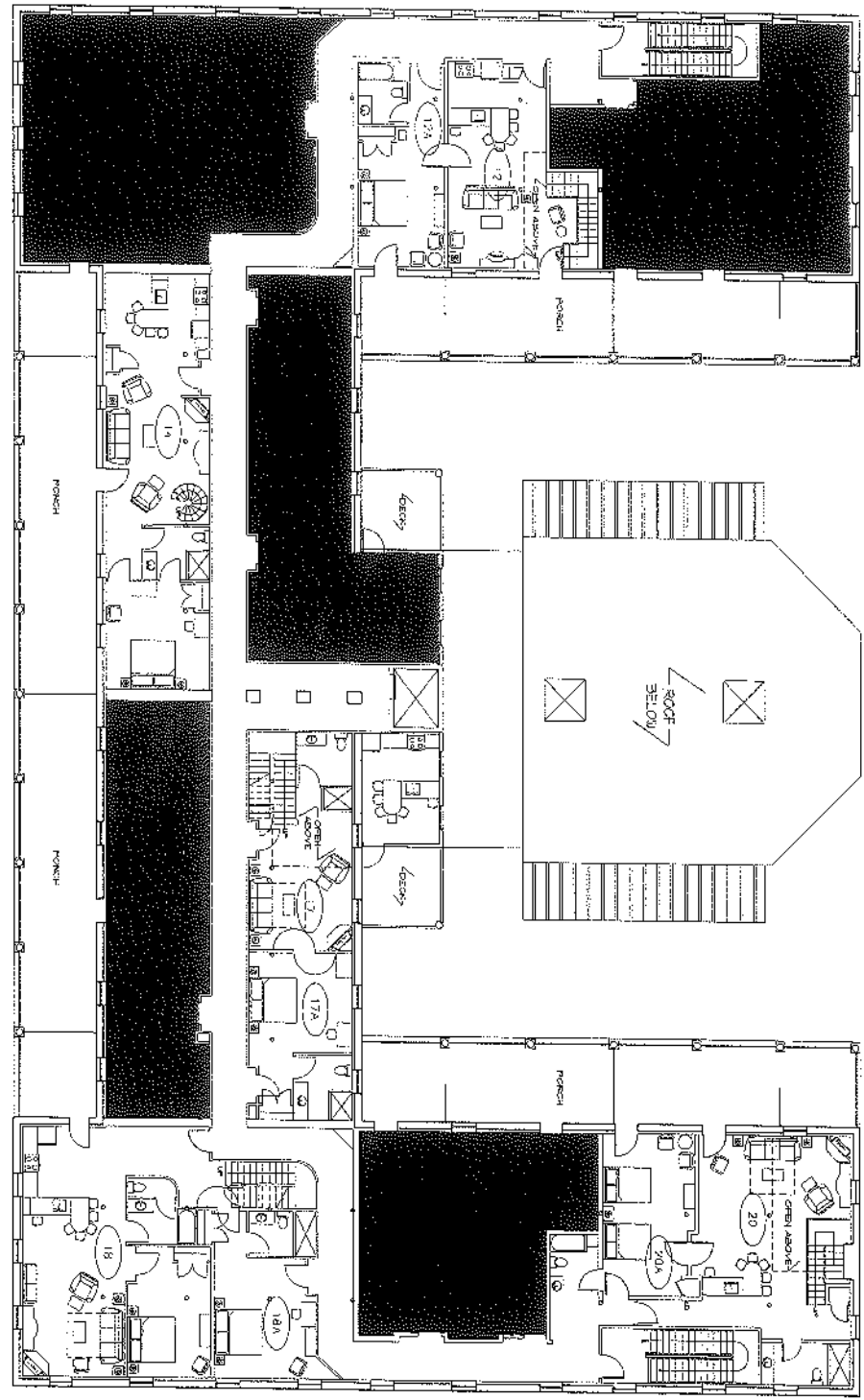
GROSS AREA = 18,831 SF



| | | | | | |
|-----|--|---|--|---|---|
| A02 | Dwg: 22.2807 Date: 22.2807 Title: 22.2807 Project: 22.2807 Scale: 1/8" = 1'-0" | Revision: 1. AS BUILT FOR CONSTRUCTION | PROJECT: The Inn at Diamond Cove, LLC Portland ME | ARCHETYPE, P.A. ARCHITECTS 48 Union Street Portland, Maine 04101 (207) 773-4392 Fax (207) 772-4056 | DEVELOPER: Batman Partners, LLC 245 Commercial Street Portland ME 04101 |
| | JUNE 24, 2013 PROPOSED 1ST FLOOR PLAN | | | | |

01 SECOND FLOOR P. AN
SCALE: 1/8"=1'-0"

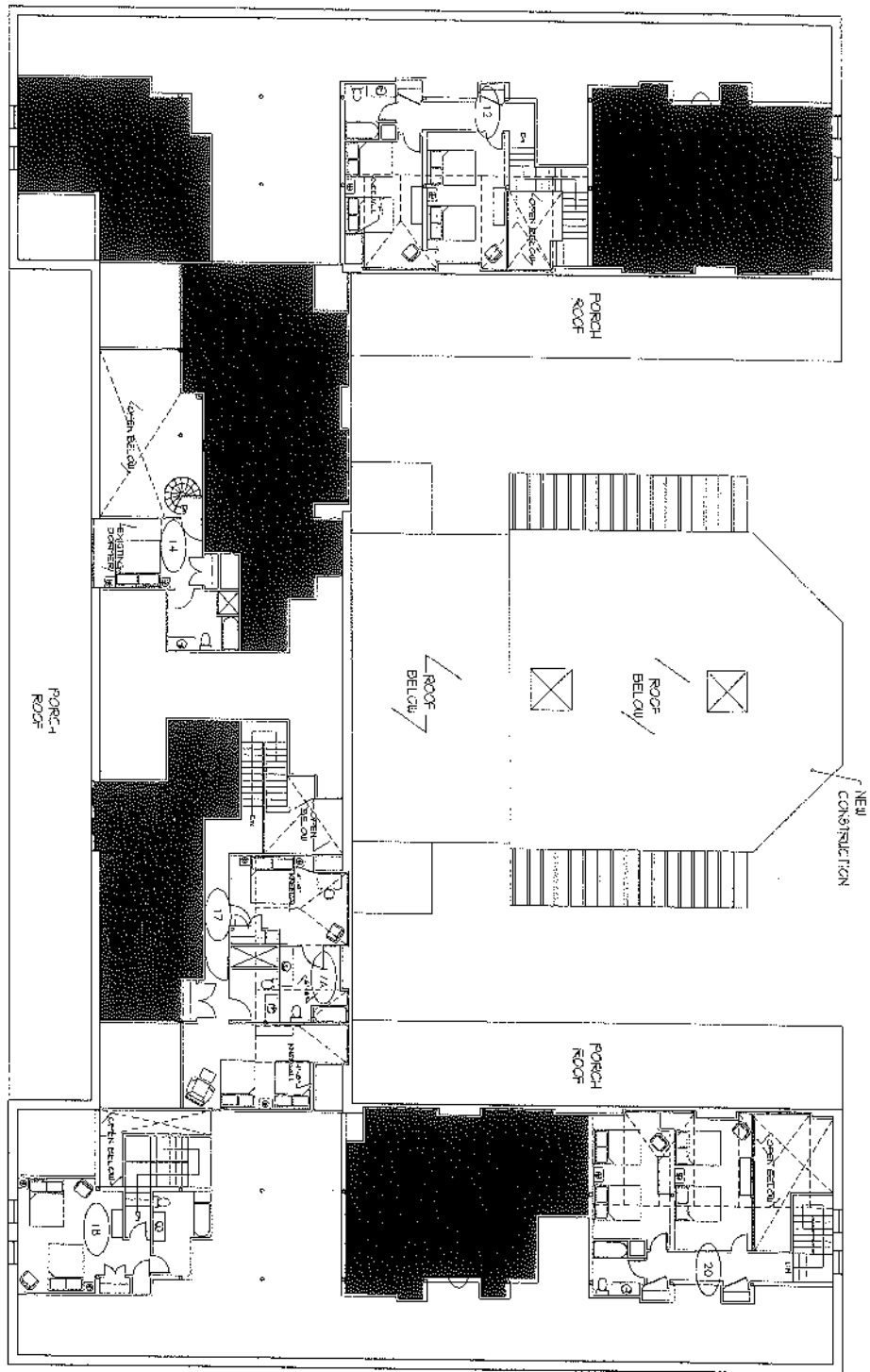
GROSS AREA = 14284.8 SF



| | | | | | | |
|-----|--|----------------------|---|--|--|---|
| A03 | Date: October 22, 2007 | Scale: 1/8"=1'-0" | Revisions: BASED FOR CONSTRUCTION (1/2008) | PROJECT: The Inn at Diamond Cove, LLC | ARCHETYPE, P.A. ARCHITECTS 98 Union Ward Portland, Maine 04101 (207) 775-6922 Fax: (207) 775-4934 | DEVELOPER: Bateman Partners, LLC 241 Commercial Street Portland, ME 04101 |
| | <p style="font-size: 1.5em; font-weight: bold;">JUNE 24 2008</p> <p style="font-weight: bold;">PROPOSED 2ND FLOOR PLAN</p> | | | Portland ME | | |

1/3" = 1'-0" THIRD FLOOR PLAN
SCALE: 3/8" = 1'-0"

GROSS AREA: 137,942 SF



A04

Date: October 22, 2007
 Scale: 1/8" = 1'-0"
JUN 24 2008
PROPOSED
3RD FLOOR PLAN

Revisions:
 1. SEE FOR CONSTRUCTION NOTES

PROJECT:
 The Inn at Diamond Cove, LLC
 Portland
 ME

ARCHETYPE, P.A.
 ARCHITECTS
 48 Union Ward Portland, Maine 04101
 (207) 772-6021 Fax (207) 772-4656

DEVELOPER:
 Batman Partners, LLC
 245 Commercial Street
 Portland, ME 04101

APPLICANT'S PROPOSAL NOW SUPERSEDED BY
PLANNING BOARD RECOMMENDATION

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 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. 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 approved rehabilitation may include construction of a new swimming pool and related 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 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. Disposal of Solid Waste. All solid waste generated on the Premises shall be collected and disposed of privately, with temporary storage of such waste being handled within the building and disposed of in accordance with all applicable regulations, codes and laws; 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. Fire Protection. The Double Barracks and Hospital buildings shall be fully sprinkled and have installed, and at all times functional, a fire alarm system operative prior to the issuance of any certificate of occupancy for the respective building.

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 hotelominiums. 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.

6. 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.



Zoning Amendment Application
Department of Planning and Development
Planning Division and Planning Board

1. Applicant Information

The Inn at Diamond Cove, LLC
Name
c/o Ronald N. Ward, Agent
Address
P. O. Box 9781
Portland, ME 04104
207-772-2992 207-772-1881
Phone Fax

2. Subject Property

Building 46 ("Double Barracks")
Building 19 ("Hospital")
Address
Great Diamond Island
Assessor's Map 83E-F-460 (Building 46)
Assessor's Map 83B-M-159 (Building 19)
Assessor's Reference (Chart-Block-Lot)

3. Property Owner: Applicant X Other

City of Portland, Maine
Name
389 Congress Street
Address
Portland, ME 04101-3509
207-874-8480 207-874-8497
Phone Fax

4. Billing Address:

Same as above
Name
Address

4. Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Purchase and Sale Agreement dated May 4, 2007, as amended by
First Amendment dated September 13, 2007

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

5. Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

6. Existing Use:

Describe the existing use of the subject property:

The buildings on the subject property are abandoned and grossly deteriorated.

7. Current Zoning Designation(s):

Ft. McKinley Conditional Zone, January 28, 1986

1-B-2

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

The Double Barracks Building is planned to be fully rehabilitated in accordance with historic preservation standards and supplemented with a new swimming pool and service structure, located upon the Open Space. The building itself will house up to a maximum of 22 residential units, governed by a newly-formed condominium association. Each of the units shall be considered a "lot" within the Diamond Cove Homeowners Association and will be used for purposes consistent with a residential hotel condominium, including reasonable and customary on-site services limited to the owners, their guests, tenants in residence and members of DCHA. The rehabilitation of the Hospital remains to be detailed but would be much smaller in scope with uses substantially the same as the Double Barracks.

9. Sketch Plan: On a separate sheet, please provide a sketch plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 100'.)

10. Proposed Zoning: Please check all that apply:

A. _____ Zoning Map Amendment, from _____ to _____

B. X Zoning Text Amendment to ~~Section 14~~ Ft. McKinley Conditional Zone

For Zoning Text amendment, attached on a separate sheet, the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

C. _____ Conditional or Contract Zone

A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

11. Application Fee: An Application Fee must be submitted by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below.) The applicant also agrees to pay all costs of publication (or advertising) of the Workshop and Public Hearing notices as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

X Fee for Service Deposit \$200.00
(This fee is required for all applications in addition to the application fee listed below)

_____ Zoning Map Amendment \$2,000.00

X Zoning Text Amendment \$2,000.00

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*
Sergio M. Zelin†
Ronald N. Ward*
David J. Backer*
John S. Kaminski*
William L. Pleuffe*
Jerral A. Crouter*
Michael E. High*
Richard A. Shway*
Bruce W. Smith*
Gary D. Vogel*
E. William Stockmeyer*
Benjamin E. Marcus*
Melissa A. Hewey*†
Eric R. Herlan**†
Jeanne M. Kincaid**†
Gregory W. Sample*
Daniel J. Rose*†
Kaighn Smith, Jr.*
Diana J. Nathanson*
Edward J. Kelleher*
S. Campbell Badger*
Melissa L. Ciley*
Amy K. Tchao**
David S. Sherman, Jr.*
Robert P. Nadeau*
Stephen C. Jordan**†
Catherine D. Aivaxencer*
Brian D. Willing*
John Lisnik, Jr.*†
Aaron M. Pratt*†
James C. Schwellenbach**†
Elizabeth D. McEvoy*
Jeffrey T. Piantanone*
Peter C. Felrly*
Jessica M. Emmons*
Jonathan M. Goodman*
Mika K. Reynolds*
Abigail Greene Goldman*
Amy J. Visentin*
Sara S. Helicent*

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. 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. DeLafield 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:kji

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
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ADMITTED IN ME ONLY

Daniel Amery*
Harry R. Pringle*
Richard A. Spencer*
Gerald M. Zelnit
Ronald N. Ward*
David J. Backer*
John S. Kaminski*
William L. Plouffe*
Jerrold A. Crouter*
Michael E. High*
Richard A. Sharkey*
Bruce W. Smith*
Gary D. Vogel*
E. William Stockmeyer*
Benjamin E. Marcus*
Melissa A. Howey**
Eric R. Herlan††
Jeanne M. Kincaid††
Gregory W. Sample*
Daniel J. Rose**†
Kathryn Smith, Jr.*
Debra J. Nathanson*
Edward J. Kelleher*
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David S. Sherman, Jr.*
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Special Education

Of Counsel

Harold E. Woodsum, Jr.*
Hugh G. E. MacMahon*
Joseph L. Deafield††**
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Donald A. Kopp*

* Admitted in Maine
† Admitted in New Hampshire
◊ Admitted in Missouri

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

MEMORANDUM

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 22nd, 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 2nd 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. King
Its: City Manager

Date of Seller's acceptance of this Agreement:

~~April~~ ^{May} 4, 2007

Linda Miller

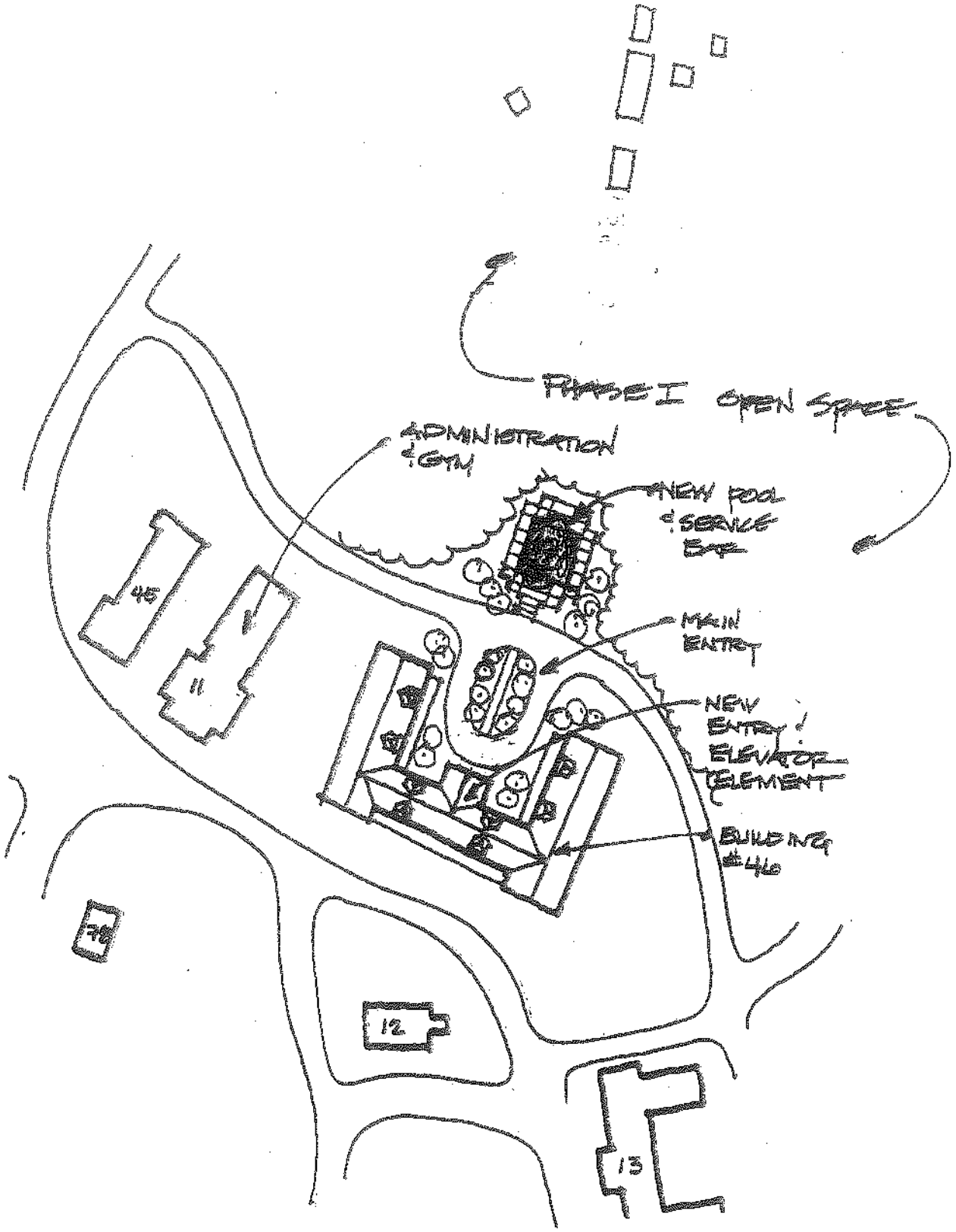
THE INN AT DIAMOND COVE, LLC

By: Ronald N. Ward
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 13th 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:

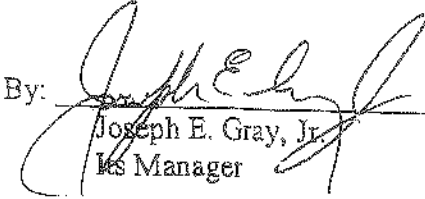
1. The Double Barracks Exercise Date stated in Section 5 of the P&S is hereby amended to August 1, 2008.
2. The Hospital Exercise Date stated in Section 5 of the P&S is hereby amended to August 1, 2009.
3. Except as specifically amended herein, the terms of the P&S are hereby ratified and reaffirmed.

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

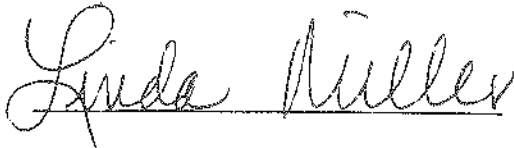
WITNESS:

CITY OF PORTLAND, MAINE



By: 

Joseph E. Gray, Jr.
Its Manager



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

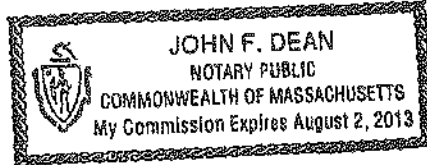
By: John Burge
John Burge, its Secretary

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,



Notary Public / Attorney-at-Law
Print Name: John F. Dean

P:\Users\vacalcagni\DCHA\Garden2Amdt6c.doc

Commonwealth of Massachusetts
Middlesex, ss.

On this 15th 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 MAID, 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.

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

776 MAIN STREET
SUITE 8
SOUTH PORTLAND, MAINE 04106
TEL. 207 775 1121
FAX 207 879 8896

- * 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.

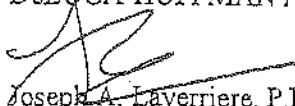
The proposed renovation of the "Double Barracks" will create twenty residential units. These twenty units consist of six 1-bedroom units, six 2-bedroom units and eight 3-bedroom units for a total of 36 bedrooms with a projected daily flow rate of 3,240 gpd (90 gpd per bedroom). Therefore the addition 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.

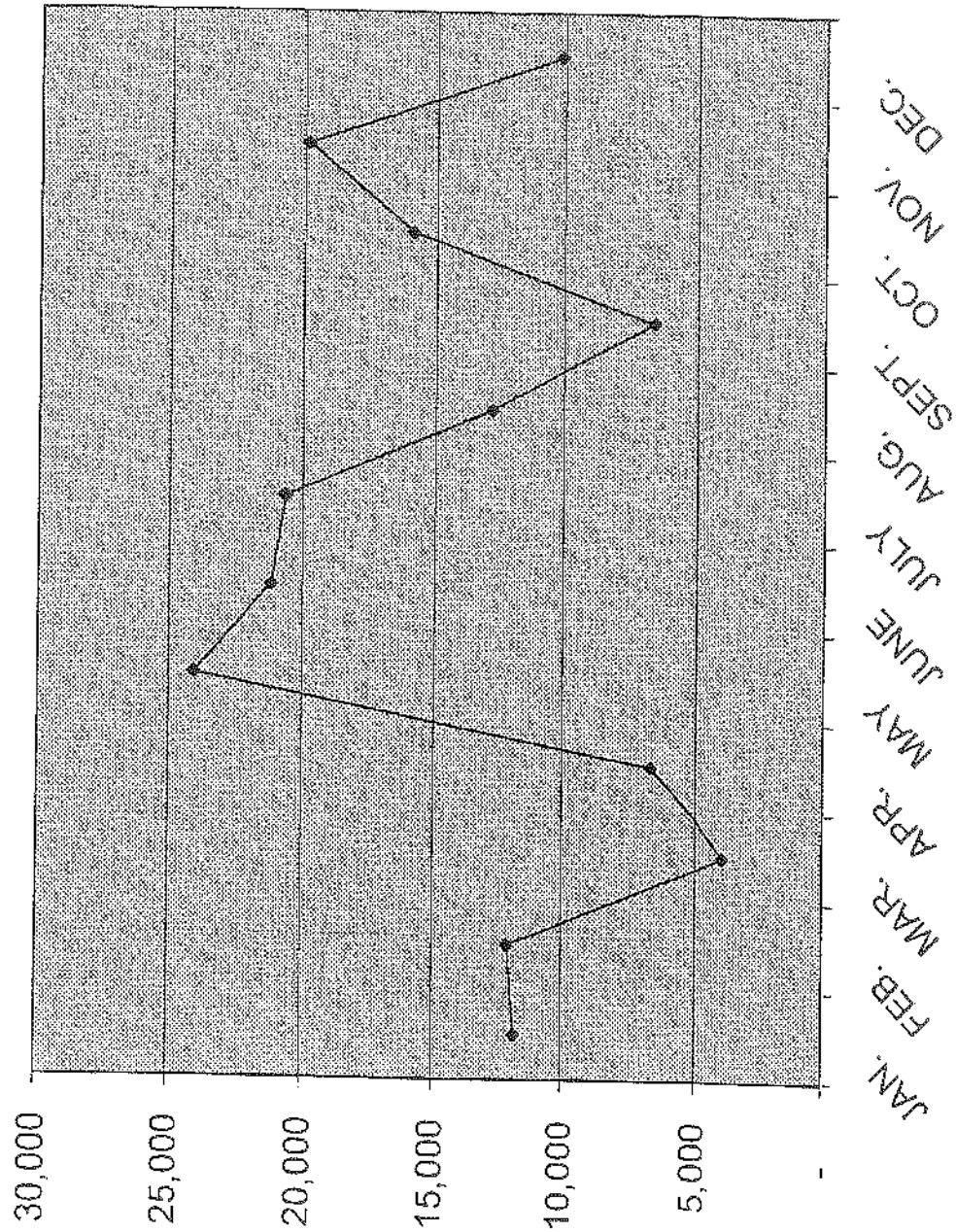

Joseph A. Laverriere, P.E.
Senior Engineer

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 | | 22,843 |
| 2 | | 17,300 |
| 3 | | 12,732 |
| 4 | | 6,584 |
| 5 | | 8,916 |
| 6 | | 8,338 |
| 7 | | 6,273 |
| 8 | | 7,053 |
| 9 | | 6,524 |
| 10 | | 6,128 |
| 11 | | 14,078 |
| 12 | | 11,011 |
| 13 | | 9,201 |
| 14 | Y | 23,946 |
| 15 | | 19,155 |
| 16 | | 13,632 |
| 17 | | 11,785 |
| 18 | Y | 23,619 |
| 19 | | 16,301 |
| 20 | | 12,729 |
| 21 | | 12,586 |
| 22 | | 21,845 |
| 23 | | N/A |
| 24 | | 7,689 |
| 25 | | 11,202 |
| 26 | | 7,602 |
| 27 | | 8,081 |
| 28 | | 8,145 |
| 29 | | 7,393 |
| 30 | Y | 7,716 |
| 31 | | 6,825 |

| | |
|--------------------|-----------------|
| TOTAL MONTHLY FLOW | 353,697 GALLONS |
| TOTAL DAYS | 31 |
| AVERAGE DAILY FLOW | 11,797 GALLONS |

FEBRUARY 2006

| DAY | RAIN (Y/N) | DAILY FLOW (GALLONS) |
|-----|------------|----------------------|
| 1 | | 6,242 |
| 2 | | 6,036 |
| 3 | Y | 41,970 |
| 4 | | 40,529 |
| 5 | Y | 41,741 |
| 6 | | 27,510 |
| 7 | | 18,551 |
| 8 | | 14,868 |
| 9 | | 12,938 |
| 10 | | 11,007 |
| 11 | | 11,008 |
| 12 | | 8,801 |
| 13 | | 8,784 |
| 14 | | 7,487 |
| 15 | | 6,938 |
| 16 | | 6,977 |
| 17 | | 7,602 |
| 18 | | 6,771 |
| 19 | | 6,975 |
| 20 | | 6,197 |
| 21 | | 6,431 |
| 22 | | 5,592 |
| 23 | | 4,691 |
| 24 | | 4,874 |
| 25 | | 6,646 |
| 26 | | 6,330 |
| 27 | | 3,844 |
| 28 | | 2,880 |

| | |
|--------------------|-----------------|
| 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 | | 2,867 |
| 3 | | 2,854 |
| 4 | | 3,176 |
| 5 | | 3,685 |
| 6 | | 3,460 |
| 7 | | 3,161 |
| 8 | | 2,423 |
| 9 | | 2,795 |
| 10 | Y | 2,589 |
| 11 | | 3,086 |
| 12 | | 2,787 |
| 13 | | 3,963 |
| 14 | Y | 6,463 |
| 15 | | 6,564 |
| 16 | | 5,744 |
| 17 | | 5,703 |
| 18 | | 5,473 |
| 19 | | 5,415 |
| 20 | | 4,525 |
| 21 | | 4,321 |
| 22 | | 3,922 |
| 23 | | 3,384 |
| 24 | | 3,600 |
| 25 | | 3,945 |
| 26 | | 3,479 |
| 27 | | 3,003 |
| 28 | | 2,786 |
| 29 | | 2,649 |
| 30 | | 3,099 |
| 31 | | 2,570 |

| | |
|--------------------|-----------------|
| TOTAL MONTHLY FLOW | 116,654 GALLONS |
| TOTAL DAYS | 31 |
| AVERAGE DAILY FLOW | 3,825 GALLONS |

APRIL 2006

| DAY | RAIN (Y/N) | DAILY FLOW (GALLONS) |
|-----|------------|----------------------|
| 1 | | 3,173 |
| 2 | | 3,018 |
| 3 | | 2,682 |
| 4 | Y | 16,612 |
| 5 | | 14,866 |
| 6 | | 13,314 |
| 7 | | 11,287 |
| 8 | | 10,579 |
| 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 | | 6,654 |
| 18 | | 5,432 |
| 19 | | 4,939 |
| 20 | | 3,523 |
| 21 | | 3,872 |
| 22 | | 5,188 |
| 23 | Y | 4,941 |
| 24 | Y | 6,300 |
| 25 | | 2,959 |
| 26 | | 3,606 |
| 27 | | 3,650 |
| 28 | | 5,021 |
| 29 | | 6,056 |
| 30 | | 4,574 |

| | |
|--------------------|-----------------|
| TOTAL MONTHLY FLOW | 198,655 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 | | 10,524 |
| 9 | | 11,337 |
| 10 | Y | 16,413 |
| 11 | Y | 25,266 |
| 12 | Y | 64,843 |
| 13 | Y | 61,135 |
| 14 | Y | 37,500 |
| 15 | Y | 40,382 |
| 16 | Y | 53,483 |
| 17 | | 32,703 |
| 18 | | 24,137 |
| 19 | Y | 26,672 |
| 20 | | 18,313 |
| 21 | | 17,670 |
| 22 | | 19,535 |
| 23 | | 15,560 |
| 24 | | 13,949 |
| 25 | | 13,051 |
| 26 | | 11,273 |
| 27 | | 11,232 |
| 28 | | 13,920 |
| 29 | | 11,274 |
| 30 | | 7,663 |
| 31 | | 8,087 |

| | |
|--------------------|-----------------|
| TOTAL MONTHLY FLOW | 746,060 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 | 43,365 |
| 5 | | 25,812 |
| 6 | | 17,350 |
| 7 | Y | 44,685 |
| 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 | | 13,468 |
| 17 | | 10,180 |
| 18 | | 10,372 |
| 19 | | 10,853 |
| 20 | | 6,645 |
| 21 | | 10,019 |
| 22 | | 10,161 |
| 23 | | 11,749 |
| 24 | Y | 14,723 |
| 25 | | 14,542 |
| 26 | | 10,835 |
| 27 | | 10,254 |
| 28 | Y | 9,683 |
| 29 | | 12,509 |
| 30 | | 12,311 |

| | |
|--------------------|-----------------|
| TOTAL MONTHLY FLOW | 634,495 GALLONS |
| TOTAL DAYS | 30 |
| AVERAGE DAILY FLOW | 21,150 GALLONS |

1-65

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 | | 12,675 |
| 5 | | 11,671 |
| 6 | | 11,015 |
| 7 | | 12,674 |
| 8 | | 14,476 |
| 9 | | 13,111 |
| 10 | | 9,076 |
| 11 | Y | 12,349 |
| 12 | Y | 29,727 |
| 13 | | 44,492 |
| 14 | | 29,553 |
| 15 | | 26,711 |
| 16 | | 20,976 |
| 17 | | 18,769 |
| 18 | | 15,611 |
| 19 | | 13,616 |
| 20 | | 15,643 |
| 21 | | 31,525 |
| 22 | Y | 35,696 |
| 23 | Y | 35,716 |
| 24 | | 30,384 |
| 25 | | 22,194 |
| 26 | | 21,371 |
| 27 | | 20,387 |
| 28 | | 26,863 |
| 29 | | 24,604 |
| 30 | | 16,955 |
| 31 | | 16,459 |

| | |
|--------------------|-----------------|
| TOTAL MONTHLY FLOW | 638,841 GALLONS |
| TOTAL DAYS | 31 |
| AVERAGE DAILY FLOW | 20,611 GALLONS |

AUGUST 2006

| DAY | RAIN (Y/N) | DAILY FLOW (GALLONS) |
|-----|------------|----------------------|
| 1 | | 21,204 |
| 2 | | 18,036 |
| 3 | | 17,341 |
| 4 | | 17,867 |
| 5 | | 16,748 |
| 6 | | 17,871 |
| 7 | | 14,408 |
| 8 | | 14,145 |
| 9 | | 14,531 |
| 10 | | 13,472 |
| 11 | | 15,730 |
| 12 | | 13,111 |
| 13 | | 14,207 |
| 14 | | 11,651 |
| 15 | Y | 13,340 |
| 16 | | 10,242 |
| 17 | | 18,671 |
| 18 | | 4,296 |
| 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 | | 6,584 |
| 30 | | 7,314 |
| 31 | | 6,165 |

| | |
|--------------------|-----------------|
| TOTAL MONTHLY FLOW | 356,609 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 | | 8,883 |
| 4 | Y | 15,197 |
| 5 | | 5,209 |
| 6 | | 4,667 |
| 7 | | 4,566 |
| 8 | | 13,372 |
| 9 | | 2,781 |
| 10 | | 5,345 |
| 11 | | 4,546 |
| 12 | | 5,281 |
| 13 | | 5,133 |
| 14 | | 4,026 |
| 15 | | 5,375 |
| 16 | | 7,616 |
| 17 | | 5,850 |
| 18 | | 7,132 |
| 19 | | 18,248 |
| 20 | | 7,478 |
| 21 | | 5,858 |
| 22 | | 5,761 |
| 23 | Y | 4,464 |
| 24 | | 5,422 |
| 25 | | 5,422 |
| 26 | | 5,422 |
| 27 | | 4,310 |
| 28 | | 5,891 |
| 29 | Y | 6,019 |
| 30 | | 7,835 |

| | |
|--------------------|-----------------|
| TOTAL MONTHLY FLOW | 197,778 GALLONS |
| TOTAL DAYS | 30 |
| AVERAGE DAILY FLOW | 6,593 GALLONS |

OCTOBER 2006

| DAY | RAIN (Y/N) | DAILY FLOW (GALLONS) |
|-----|------------|----------------------|
| 1 | | 5,268 |
| 2 | | 7,223 |
| 3 | | 7,066 |
| 4 | | 5,462 |
| 5 | | 3,920 |
| 6 | | 6,049 |
| 7 | | 6,627 |
| 8 | | 4,369 |
| 9 | | 4,833 |
| 10 | | 2,874 |
| 11 | | 17,253 |
| 12 | Y | 26,485 |
| 13 | | 12,939 |
| 14 | | 12,470 |
| 15 | | 9,547 |
| 16 | | 8,440 |
| 17 | | 12,345 |
| 18 | | 9,145 |
| 19 | | 10,387 |
| 20 | Y | 31,103 |
| 21 | | 27,606 |
| 22 | | 25,704 |
| 23 | | 19,054 |
| 24 | | 12,094 |
| 25 | | 14,596 |
| 26 | | 12,322 |
| 27 | | 16,193 |
| 28 | Y | 69,120 |
| 29 | | 41,219 |
| 30 | | 27,444 |
| 31 | | 22,395 |

| | |
|--------------------|-----------------|
| TOTAL MONTHLY FLOW | 491,592 GALLONS |
| TOTAL DAYS | 31 |
| AVERAGE DAILY FLOW | 15,856 GALLONS |

NOVEMBER 2006

| DAY | RAIN (Y/N) | DAILY FLOW (GALLONS) |
|-----|------------|----------------------|
| 1 | | 16,263 |
| 2 | Y | 12,248 |
| 3 | | 12,405 |
| 4 | | 9,955 |
| 5 | | 10,474 |
| 6 | | 8,372 |
| 7 | | 12,890 |
| 8 | Y | 46,530 |
| 9 | | 58,945 |
| 10 | | 26,115 |
| 11 | | 31,205 |
| 12 | Y | 23,750 |
| 13 | Y | 32,203 |
| 14 | Y | 60,148 |
| 15 | | 20,588 |
| 16 | Y | 24,945 |
| 17 | Y | 34,420 |
| 18 | | 19,794 |
| 19 | | 22,107 |
| 20 | | 11,288 |
| 21 | | 12,086 |
| 22 | | 12,675 |
| 23 | | 16,065 |
| 24 | | 12,127 |
| 25 | | 13,313 |
| 26 | | 12,798 |
| 27 | | 8,480 |
| 28 | | 7,554 |
| 29 | Y | 6,661 |
| 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 | | 15,821 |
| 2 | Y | 12,050 |
| 3 | | 10,618 |
| 4 | | 8,338 |
| 5 | | 6,751 |
| 6 | | 8,686 |
| 7 | | 6,421 |
| 8 | | 5,112 |
| 9 | | 5,288 |
| 10 | | 6,236 |
| 11 | Y | 5,704 |
| 12 | | 5,704 |
| 13 | Y | 4,431 |
| 14 | | 3,475 |
| 15 | Y | 4,725 |
| 16 | Y | 7,964 |
| 17 | | 5,131 |
| 18 | | 4,168 |
| 19 | | 6,027 |
| 20 | | 6,348 |
| 21 | | 3,038 |
| 22 | Y | 5,135 |
| 23 | Y | 23,458 |
| 24 | | 16,550 |
| 25 | | 18,469 |
| 26 | | 17,737 |
| 27 | | 16,056 |
| 28 | | 12,879 |
| 29 | | 19,524 |
| 30 | | 19,315 |
| 31 | | 17,511 |

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

Ronald N. Ward

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Kaighn Smith, Jr.*
Daina J. Nathanson*
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Mika K. Reynolds*
Abigail Greene Goldman*
Amy J. Visentin*
Sara S. Hellstedt*

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.

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

Herold E. Woodsun, Jr.*
Hugh G. E. MacMahon*
Joseph L. Dalefield III*
Robert L. Gips*
Donald A. Kepp*

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

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.

May 19, 2008

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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

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. 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 23rd 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. 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

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

DIAMOND COVE ASSOCIATES
By: [Signature]
Richard Dobson, Partner

MAINE AUDUBON SOCIETY
By: Karin R. Tilberg
Karin Tilberg, Esq.
Attorney

CONSERVATION LAW FOUNDATION
By: _____
Attorney

March 9, 1989

ISLAND INSTITUTE
By: [Signature]
Philip Conkling
Director

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ADMITTED IN ME ONLY

MEMORANDUM

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.

RNW:kjl
 Enclosure

- Daniel Amory*
- Kerry R. Pringle*
- Richard A. Spencer*
- Gerald M. Zelint
- Ronald N. Ward*
- David J. Becker*
- John S. Kaminski*
- William L. Plouffe*
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 Joseph L. Delefield III*
 Robert L. Gips*
 Donald A. Kopp*

* Admitted in Maine
 † Admitted in New Hampshire
 ◊ Admitted in Missouri

1-I-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:

1-1-4

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. Flouffe
WILLIAM L. FLOUFFE, 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



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



April 24, 2008

Nathan Bateman
The Inn at Diamond Cove, LLC
Bateman Partners, LLC
261 Commercial Street
Portland, ME 04101

RE: The Inn at Diamond Cove

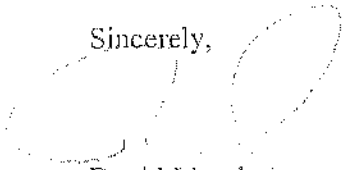
Dear Mr. Bateman,

In reference to the above mentioned project, which is the conversion of the Double Barracks on Great Diamond Island to a hotel use, please be advised of the following:

1. The building was designed under the code criteria of NFPA 101. This code covers Life Safety issues. I have also had preliminary discussions with Steve Dodge, plan reviewer at the State Public Safety Office. We are both in agreement that drawings to date are in compliance with this code.
2. The building is to be fully sprinkled per NFPA 13.
3. The design is in compliance with the IBC CODE 2003 edition. These code criteria will be verified in final construction documentation.

Please understand that all design work in connection with this building will abide by the above code criteria yielding a current code compliant building.

Sincerely,



David Lloyd
Architect